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Standing Committee
on Banking and commerce
Proceedings 1968-69 No. 1-31



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First Session—Twenty-eighth Parliament

1968 - 69

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 1 - 51

Complete Proceedings on Bill S-2,
intituled:

"An Act to amend the Publication of Statutes Act".

WEDNESDAY, SEPTEMBER 25th, 1968

WITNESS:

Department of Justice: J. W. Ryan, Director, Legislation Section.

REPORT OF THE COMMITTEE

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THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Fergusson	McDonald
Aseltine	Gélinas	Molson
Beaubien (<i>Bedford</i>)	Gouin	O'Leary (<i>Carleton</i>)
Beaubien (<i>Provencher</i>)	Grosart	Paterson
Benidickson	Haig	Pearson
Blois	Hayden	Phillips (<i>Prince</i>)
Bourget	Hays	Rattenbury
Burchill	Inman	Roebuck
Carter	Irvine	Smith (<i>Queens-</i> <i>Shelburne</i>)
Choquette	Isnor	Thorvaldson
Connolly (<i>Ottawa West</i>)	Kinley	Vaillancourt
Cook	Laird	Walker
Croll	Lang	Welch
Desruisseaux	Leonard	White
Dessureault	Macdonald (<i>Cape Breton</i>)	Willis—(49)
Everett	MacKenzie	
Farris	Macnaughton	

Ex Officio members: Flynn and Martin.

(Quorum 9)



ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, September 24th, 1968:

"Pursuant to the Order of the Day, the Honourable Senator Martin, P.C., moved, seconded by the Honourable Senator Hayden, that the Bill S-2, intituled: "An Act to amend the Publication of Statutes Act", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Martin, P.C., moved, seconded by the Honourable Senator Hayden, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, September 25th, 1968.

(1)

Pursuant to notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Upon motion, the Honourable Senator Hayden was unanimously elected *Chairman*.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien (*Bedford*), Benidickson, Bourget, Carter, Cook, Croll, Everett, Flynn, Gouin, Haig, Inman, Irvine, Laird, Lang, Macdonald (*Cape Breton*), Macnaughton, Martin, McDonald, Molson, Pearson, Welch and Willis—(24).

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.
R. J. Batt, Assistant Law Clerk and Parliamentary Counsel,
and Chief Law Clerk of Committees.

Upon motion, it was *Resolved* to recommend that 800 English and 300 French copies of these proceedings be printed.

Bill S-2, "An Act to amend the Publication of Statutes Act", was read and considered.

The following witness was heard:

DEPARTMENT OF JUSTICE:

J. W. Ryan, Director, Legislation Section.

The Honourable Senator Molson moved that the words "in the most economical manner" on lines 14 & 15 of clause 1 be deleted.

The question being put, the Committee divided as follows:

YEAS—12

NAYS—3

Motion *carried*.

The Honourable Senator Willis moved that the Committee adjourn consideration of the said Bill.

Motion declared *carried*.

At 10.40 a.m. the Committee adjourned until 2.15 p.m. this day.

WEDNESDAY, September 25th, 1968.

(2)

Pursuant to adjournment and notice the Committee *resumed* its consideration of Bill S-2.

Present: The Honourable Senators Hayden (*Chairman*), Beaubien (*Bedford*), Carter, Connolly (*Ottawa West*), Cook, Dessureault, Everett, Flynn, Gouin, Haig, Inman, Kinley, Macdonald (*Cape Breton*), McDonald, Molson, Smith (*Queens-Shelburne*), and Willis—(17).

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.
R. J. Batt, Assistant Law Clerk and Parliamentary Counsel,
and Chief Clerk of Committees.

Mr. J. W. Ryan was again heard.

The Honourable Senator Macdonald (*Cape Breton*) moved the following amendment:

Strike out clause 1 and substitute therefor the following:

“1. Subsection (2) of section 10 of the *Publication of Statutes Act* and all that portion of subsection (3) of the said section that precedes paragraph (a) thereof are repealed and the following substituted therefor:

‘(2) Copies of the volume or volumes of *the Acts* referred to in subsection (1) shall be printed by the Queen’s Printer, who shall, as soon after the close of each session as practicable, deliver or send by post or otherwise the proper number of copies to’”

The question being put, the motion was declared *carried*.

The Honourable Senator Molson moved the following amendment:

Strike out clause 2 and substitute therefor the following:

“2. Section 11 of the said Act is repealed and the following substituted therefor:

‘11. The Statutes shall be printed in *the English* and French languages in such form, on such paper and in such type and shall be bound in such manner as the Governor in Council may prescribe by regulation.’”

The question being put, the motion was declared *carried*.

On motion of the Honourable Senator Flynn it was *Resolved* to report the said Bill as amended.

At 2.45 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, September 25th, 1968.

The Standing Committee on Banking and Commerce to which was referred the Bill S-2, intituled: "An Act to amend the Publication of Statutes Act", has in obedience to the order of reference of September 24th, 1968, examined the said Bill and now reports the same with the following amendments:

1. Strike out clause 1 and substitute therefor the following:

"1. Subsection (2) of section 10 of the *Publication of Statutes Act* and all that portion of subsection (3) of the said section that precedes paragraph (a) thereof are repealed and the following substituted therefor:

'(2) Copies of the volume or volumes of the Acts referred to in subsection (1) shall be printed by the Queen's Printer, who shall, as soon after the close of each session as practicable, deliver or send by post or otherwise the proper number of copies to'"

2. Strike out clause 2 and substitute therefor the following:

"2. Section 11 of the said Act is repealed and the following substituted therefor:

'11. The Statutes shall be printed in the English and French languages in such form, on such paper and in such type and shall be bound in such manner as the Governor in Council may prescribe by regulation.'"

All which is respectfully submitted.

Salter A. Hayden,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Wednesday, September 25, 1968.

The Standing Committee on Banking and Commerce, to which was referred Bill S-2, to amend the Publication of Statutes Act, met this day at 9.30 a.m. to give consideration to the bill.

The Clerk of the Committee: Honourable senators, the first order of business is the selection of a chairman. May I have a motion?

Senator Martin: I would like to propose the name of Senator Hayden.

Senator Willis: I will second the motion.

The Clerk of the Committee: It has been moved by Senator Martin, and seconded by Senator Willis, that Senator Hayden be the chairman of the committee. Is it agreed?

Hon. Senators: Agreed.

Senator Macnaughton: It seems to me that the record should show that that motion is carried unanimously.

Senator Salter A. Hayden in the Chair.

The Chairman: Thank you very much.

We have one bill before us this morning, namely, Bill S-2, to amend the Publication of Statutes Act. We discussed a bill with this designation a year ago, but that bill did not pass the House of Commons before dissolution. This bill is in the same form, and we have before us the same witness this morning. The question is one as to whether we should print the record of these proceedings. My own feeling is that we should because the bill originates here, and in the other place they may be looking to see what was the evidence and the material before this committee.

Hon. Senators: Agreed.

The Committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The Chairman: So far as the bill itself is concerned, our witness is Mr. J. W. Ryan of the Department of Justice. Mr. Ryan, who is well known to us, appeared as a witness the last time. Mr. Ryan's position is described technically as Director, Legislation Section, Department of Justice.

Mr. Ryan, the bill is not very long. Would you let us have the benefit of your explanation?

Mr. J. W. Ryan (Director, Legislation Section, Department of Justice): Mr. Chairman and honourable senators, the purpose of the bill is set out in the explanatory notes. As far as its purpose is concerned with respect to the amendment, it is relatively simple. Its purpose is to change two provisions of the Publication of Statutes Act, one of which can be read as requiring that the annual statutes be published separately in English and French volumes, although this, of course, is subject to argument. It is a matter of interpretation.

The second provision, and possibly the more important one, is that contained in section 11 of the Publication of Statutes Act in which since 1867 certain directions have been given to the printing bureaus, or the Queen's Printer. Perhaps I can read you the provision as it originally appeared in Chapter 1 of the Statutes of 1867, and then you will see to what I am referring. Section 11 of Chapter 1 of the Statutes of 1867 read:

The Statutes shall be printed in royal octavo form on fine paper, in eleven point type, not more than four and three-quarter inches wide by eight and one-half inches deep, including marginal notes in seven point, such notes referring to the year and chapter of previous statutes,

whenever the text amends, repeals or changes the enactments of former years—

And then it goes on into the binding with gilt letters, which is not important.

By an amendment in 1925 the reference to ems and picas was changed to eleven point type and to paper of not more than four and three-quarter inches wide by eight and one-half inches deep, including marginal notes in seven point.

The purpose of this amendment is to permit flexibility in laying down these specifications so that the annual publication of the statutes can be in whatever form the revised statutes are in. That, I think, sums up the purpose of the amendment.

The Chairman: This bill repeals the original provision which spells out the size and type of print and everything else.

Mr. Ryan: That is correct.

The Chairman: And leaves it to be determined by regulation?

Mr. Ryan: That is correct, sir.

The Chairman: I shall start the discussion by saying that in the debate on second reading some question was raised as to the inclusion in section 1 of the bill of the words "in the most economical manner." Have you any comment to make on that? The idea was, I think, that we should assume that those charged with this job will do it in the best way, consistent with economy.

Mr. Ryan: With good management and economy.

The Chairman: Yes, with good management. There is just some question whether there is some reflection in the use of those words, or is it an excess of caution?

Senator Croll: Is that not the usual way in which the Government handles matters?

The Chairman: The Chair has no opinion on that. I take it, senator, that that is a rhetorical question? Are there any questions on that point? What is the view of the committee, or have you any views to express, Mr. Ryan?

Mr. Ryan: None on this particular point. I suppose it could be sent by air mail for speedier delivery when it might go by ordinary post more economically.

Senator Flynn: Do you see any problem if we were to delete these words? Would it cre-

ate any problem for the department or any official?

Mr. Ryan: I would not see any problem in that, senator.

Senator Molson: Do provisions similar to these occur anywhere else?

The Chairman: Are you referring to the use of the expression "in the most economical manner?"

Senator Molson: Yes, is there a similar instruction in any other act?

Mr. Ryan: I will look to see.

The Chairman: Mr. Ryan is looking to see if he can find the origin of this expression.

Senator Willis: Mr. Chairman, would there be two volumes of each, one in French and one in English?

The Chairman: No, it would be in one volume. I have some information on that. There would be two columns on the page, one in English and one in French.

Senator Everett: If my memory serves me correctly Mr. Ryan, on the last occasion, gave his view on the problem of interpretation as between the French and English text. If that is germane to this bill I would like to hear it again.

Mr. Ryan: May I refer to the earlier question?

The Chairman: Yes.

Mr. Ryan: The particular phrase you are concerned about comes from the act of 1867. They may have been more suspicious than we are today.

The Chairman: They did not have a flying service then.

Senator Cook: They were more economical-minded in 1867.

Senator Macdonald (Cape Breton): Would it not be better to cut out all of that and provide that the Queen's Printer shall, as soon after the close of each session as practicable, cause to be delivered the proper number of copies, instead of having all this business of delivering or sending by post or otherwise?

Mr. Ryan: It would be better if you keep in the reference to "send by post or otherwise," because "delivery" might require that he go out and hand it to everybody.

Senator Croll: Mr. Ryan, these words have been there since the statute first came into existence?

Mr. Ryan: That is right.

Senator Croll: You have had no trouble with them? We are merely carrying them forward in this present bill.

Mr. Ryan: That is the reason they are in there, senator. They were always in the act.

Senator Macnaughton: I would like to suggest another reason, namely, there are always public demands for free copies, and this would be semi-authorization to refuse free copies except to persons so entitled.

Senator Macdonald (Cape Breton): No, because the next subsection takes care of that.

The Chairman: Yes, the persons who are entitled are so designated.

Senator Aseltine: This is the year in which the statutes are to be revised. Do you know what the price will be?

Mr. Ryan: I have no idea at this time, senator. That is usually done by the Queen's Printer, and is based on cost.

Senator Martin: \$9.50.

Senator Laing: Mr. Chairman, perhaps Mr. Ryan can give us an idea of when we might expect the new R.S.C.

The Chairman: Are you asking when they might be out?

Senator Laing: Yes.

The Chairman: Have you any information on that, Mr. Ryan?

Mr. Ryan: We had been hoping to have the R.S.C. at the printer's at this time, and perhaps late in this year have them out, but that does not look possible at the moment. The matter of this statute, of course, has caused a stall. There is also the fact which was just touched upon by Mr. Trudeau last year. The computerization of the revised statutes has caused a delay in preparing them, but on the whole it may be for the better, because the statutes may be more topical when they do come out, since with modern printing methods it may be possible to do away with supplements and bring the statutes up very closely to a session of Parliament.

Senator Martin: But, it is a fact that when the revised statutes come out they will be in bilingual form?

Mr. Ryan: Yes, that has been...

The Chairman: That was legislated on a couple of years ago, was it not?

Mr. Ryan: It was not legislated upon, but it was decided in 1967.

Senator Pearson: On the question of marginal notes, I find that when you have a bill which has two or three pages to it, the marginal notes in French are somewhat obscured when you fold the bill up. Would it not be possible to close the spaces up, putting the French marginal notes over on the outside along with the English? They both refer to the same paragraph. This would save space and keep it more or less clearer than in the way it is now.

The Chairman: In the copy which I have, I do not know how much attention was paid in the phrasing of the bill.

Senator Pearson: If you are concerned with the bills which we have in the house now, they show these marginal notes all right, but when it is bound you cannot see the marginal notes clearly in the French version.

The Chairman: How will that be taken care of in the actual printing, Mr. Ryan? If you look at the bill, you notice that the marginal space for French notes is quite ample.

Senator Pearson: It is quite all right, yes. Will it be as clear as that when the statute is bound?

Mr. Ryan: Have senators received copies of this document I have in my hand?

The Chairman: No, they have not been distributed.

Senator Pearson: When that is printed, will it be as clear as this?

The Chairman: We are distributing one right now which will show you how it will appear.

Senator Molson: Mr. Chairman, would you like a motion to the effect that you strike out the words "in the most economical manner"?

The Chairman: The Chair is here, if a motion is made properly, to put the motion to the meeting, regardless of what his wishes might be in the matter.

Senator Molson: Shall I rephrase my question? Would it be in order, Mr. Chairman, to move "that the words 'in the most economical manner' be struck out?"

The Chairman: Yes, it is in order.

Senator Carter: I will second the motion.

Senator Croll: Do I understand the motion to mean that we do not do this in the most

economical manner? Is that what the motion means?

Senator Carter: Not necessarily.

Senator Molson: If the phrase is in this bill it should be in practically every bill we get, or in a great many of them. It seems to me we are getting into a position—perhaps it is a survival—where we are giving directions as to the manner of dealing with things in the Government. It hardly seems necessary in the act itself.

The Chairman: What you mean is that this is something which should be administrative—taken care of in good management.

Senator Molson: Yes, it should apply to all offices of the Government.

Senator Flynn: If it is there and if you do not find it in all of them, or provisions to the same effect, it may suggest that it means something special in this case, and could open the door to unfair criticism. It seems to me that this should not be there at all.

Senator McDonald: What would be the consequences if the wording were left in the bill and if it were found the statutes were not shipped out in the most economical method?

Senator Molson: That is the question.

The Chairman: I suppose the first thing would be that the Auditor General might make some comment in his annual report.

Senator Flynn: He could do so, even if the words were not there.

The Chairman: Are you ready for the question? We have a motion:

To strike out in section 1, subsection (3), of the bill the words "in the most economical manner" where they occur.

Those in favour of the motion, will you please raise your right hands? Contrary?

The motion succeeds and section 1, subsection (3) of the bill is amended accordingly.

We still have the question raised by Senator Roebuck yesterday, that is, as to the size of the volume so that it would fit conveniently into existing library shelves. Have you a comment on that, Mr. Ryan?

Mr. Ryan: Yes, sir. The problem with the size of the volume is one of balancing two conveniences, the convenience of having as few volumes as possible in the total of the revised statutes, and the other convenience of having the size as small as possible. I believe

that measurements as given in the Senate the other day were decided upon after reviewing the Queen's rules and regulations. The size of that volume, which was under 11 inches tall, was such that it would fit standard bookshelves and yet was convenient enough to hold in the hand. By using that style and size it would also permit a reduction at least by one volume of the total revised statutes.

The Chairman: You mean, as against the separate publications in English and French?

Mr. Ryan: No, as against another volume which is to get in the bilingual form. It is a matter of compressing. Perhaps I can give you a demonstration. Senator Macdonald (Cape Breton), I believe, made reference to the 1966-1967 statutes, about which one used to swear quite a bit if one had to lift them up. As a comparison, here are the Revised Statutes of Alberta, Volume 3 of 1965. As you can see there is a difference in size. There is a difference of about an inch and a half, and this obviously is the larger volume in number of pages, that is, the Annual Statutes of Canada, 1966-67. By my count, there are two more pages here, in the Statutes of Canada, than here, in the Statutes of Alberta, and there is an inch and a half in the difference.

The Chairman: So it is a matter of compressing the volume?

Mr. Ryan: And the paper.

Senator Aseltine: If they are made so large, I do not see how one could handle them at all.

Mr. Ryan: This, I might put it, is the second biggest annual volume of statutes in the history of the Government of Canada. The largest one was in 1934, which is even more awkward to handle.

The Chairman: Would you say, Mr. Ryan, applying the new procedures and practices in the publication of these statutes, how much this volume of 1966-67 of the annual statutes would be compressed?

Mr. Ryan: It would be compressed with the same number of pages.

The Chairman: With the same number of pages and extending it one inch.

Mr. Ryan: An inch or an inch and a quarter.

The Chairman: That deals with the question as to the bulk. The only other way you can reduce the bulk is by having less legisla-

tion, and I do not think you can look forward to that.

Senator Macdonald (Cape Breton): Or by having more volumes. I do not think it is necessary to put all the statutes in one volume. I mentioned yesterday also that if you look at section 10(2) and section 11(3) in the act, you will see they deal with the same business. Under section 10(2), the Queen's Printer is supposed to have the statutes bound in one volume, unless it is impractical or inconvenient so to do. In fact, they could be in a volume which would be large and be a monstrous thing.

The Chairman: What is the direction, Mr. Ryan, in connection with whether you print the annual statutes in one volume or in two?

Mr. Ryan: At the moment the practice has been that if you go into two sessions in one period, you have the volumes, Part I and Part II, sometimes, for the different sessions; but when you have one continuous session, the practice always has been, so far as I can see, to put the statutes in one volume. Logically, and easily, you could break the volume and make two, putting the private and local acts into one, even though they do not take up very much space. However, if you break the volume equally into two halves, you are faced with the problem of renumbering the chapters, which would mean having references to "Chapter 2 of Volume 2," and this would sometimes become overlooked and some people would look up the wrong volume. Or you could split it by chapter number and carry the numbers on in the second volume, but that sometimes makes it difficult to find the chapter when you are giving the reference. I might point out that this is a decision that is made by the Queen's Printer in the printer's office, and I suppose they have considered it impractical and inconvenient. They would have to split it up in some way, but up to now they have not done so.

The Chairman: Have you a question, Senator Everett?

Senator Everett: It seems to me to be inordinately inconvenient to have to deal with volumes of this size, even reduced to the size of the new statute, especially when the overall size of the book will be of this new size. Is there any reason why it should not be split, why we could not designate a thickness beyond which the Queen's Printer will not go, and have it split on a logical basis?

The Chairman: This is more than a mechanical problem. On your suggestion, it would be mechanically possible, when you get to so many pages, to start another volume. There may be some decision as to the references you would have to make in the second volume to the first.

Senator Everett: That is what I am trying to find out, as to where the difficulty arises.

The Chairman: I am wondering why they leave the judgment to the Queen's Printer. On the mechanical aspects, I can understand it; but in regard to anything more than mechanical, I wonder why the decision is left to the Queen's Printer. Why does the Department of Justice, with experience in the field of law, not step in and make that decision?

Mr. Ryan: It is because of this act, largely. This is the authorizing or amending act. Section 11(3), you will note, says that the statutes "of each session" shall be bound in one volume. In the provinces, this does not give too much trouble, as the sessions usually run for a period of three to six months. By that time, when they go to print, they know all their statutes and they can arrange them alphabetically. If two volumes are needed they can be put on an alphabetical basis, from A to L and from M to Z. But the Statutes of Canada for each session are put in in the order assented to. There is no alphabetical arrangement. There would be the problem of splitting, say, at section 50 and carrying on to section 120. But I would like to point out to you that statutes of this size are a rarity. As I say, the only one of the equivalent size to this since 1867 was 1934.

Senator Everett: Presumably, Mr. Ryan, we are dealing with the future and not with the past. While they may have been a rarity in the past, they may not be a rarity in the future. What I cannot understand is why, even though we print them in each session, we cannot print them alphabetically. If we did print them alphabetically, we could split them from A to L and M to Z, or whatever is a convenient split.

The Chairman: I do not think you need to be bound to the date of assent, because when you locate the bill the date of assent appears at the top of the bill anyway. An alphabetical arrangement would appear to be a good arrangement.

Senator Carter: Mr. Chairman, has the commission approved this particular size of

the new statute? I am referring to the size of these specimens which were sent around to us.

Mr. Ryan: Yes.

Senator Carter: These have been approved?

Mr. Ryan: Yes.

Senator Carter: Have any estimates been made as to differences in cost between this and the old format?

Mr. Ryan: Not on the revised statutes, because there are other factors in the revised statutes for which cost will be a first-time cost—for instance, a by-product of a magnetic tape for electronic data processing. But for the annual statutes an estimate has been made of the difference in cost based on 725 pages, which is more average than this large volume, I may point out. I can give you these figures, if you wish.

The Chairman: Yes.

Mr. Ryan: The present run for the English edition in the unilingual version is 5,800 copies, and for the French edition it is 2,000 copies, for a total of 7,800 copies. The cost of printing the English edition at 725 pages is about \$18,578. The cost of printing the French edition at 725 pages is \$10,074. The total cost, then, is \$28,652. This comes to a cost per copy of \$9.75.

You would have to double that, if you were getting the two versions, of course.

The quantities of the bilingual volume will remain the same, that is, 7,800 copies. The number of pages now in the English edition are 725 and the number of pages in the French edition are 725, for a total number of 1,450 pages. But the total number of pages in the English-French edition will be reduced by one-third owing to the extra characters that can be placed on the new page format, which is the one you have been looking at, and that is because of the wider page and the use of more standard type or print. A one-third reduction of 1,450 is approximately 483 pages. This figure subtracted from the total would establish the bilingual edition at 967 pages.

The bilingual format represents 967 pages, whereas the unilingual format used at present is 725 pages. Therefore, there will be an increase in pages brought about by the bilingual edition estimated at about 242 pages based on these figures. So it will be a slightly larger volume and it will cost approximately

\$11 per copy as compared to the \$9.75 cost of the unilingual edition. This is an estimated increase of approximately \$1.25 per copy, or approximately 15 per cent.

For anyone who will be requiring both language versions, there will be a substantial saving of approximately 44 per cent, since the new price will be only \$11 instead of \$19.50, that is, \$9.75 plus \$9.75.

The use of the two-column format will result in a saving, or a decrease in the cost, to the Government of the printing of the statutes, since with only one volume the total number of pages having to be printed will be reduced from 1,450 pages, that is, 725 in English plus 725 in French, to 967 pages. That is the best estimate we are able to obtain.

Senator Carter: Thank you.

Senator Everett: I am sorry to belabour the point, but I would like to ask Mr. Ryan if there is any reason why the revised Statutes cannot be printed in alphabetical order?

Mr. Ryan: There is one practical reason for not being able to do so, senator. I am sorry that I was not able to recall it when you asked your question before. The acts of Parliament are passed in a session beginning with the first one that gets royal assent and going on to the last one. With each one we immediately have to be able to assign a chapter number to it. We do not know what is going to get through the house in the rest of the session, however, so we cannot set up an alphabetical arrangement. We have to assign a chapter number as soon as a bill receives royal assent because people have to make reference to it. They phone in immediately to find out what is the chapter number of that bill of that session. Quite frequently we cannot tell them the years of the session until the session is over, but we can give them a chapter number and we do that on the basis of assent.

Senator Everett: If, then, Mr. Ryan, Parliament were to designate the maximum thickness of each revised statute, the division could be made on the basis of chapter numbers.

The Chairman: Chapter numbers are really the royal assent dates. That establishes the priority in number.

Senator Everett: Yes. What I am concerned about is purely the thickness of the book. I think probably the thickness is going to get greater and, really, the Queen's Printer here,

according to subsection (3) of section 11 is almost required, unless it becomes impossible, to print it in one volume, and it seems to me that the time has come to say that the volume shall not be over so many inches thick, or whatever measurement you use.

Mr. Ryan: I am in a bit of a difficulty commenting on that, because I am outside my own area. There are others who could certainly speak with authority on that. Academically, it could be done on the basis of, for example, stopping at approximately 1,200 pages, but not ending in the middle of a chapter, and then starting another volume.

The Chairman: If you took all the extraneous items that are in the volume of the annual statutes, the private acts, for instance, and any other matters that are published in the annual volume, you would reduce it by some considerable quantity. There is precedence for doing that, because the divorce bills were published in a separate volume, were they not?

Mr. Ryan: I do not believe they were published at all, sir.

The Chairman: I mean going away back.

Mr. Ryan: Away back there was a division, yes, and the Local and Private Acts were published separately. But they are getting smaller every year. For example, there are only about 109 pages here.

The Chairman: Is there anything further on that?

Senator Everett: I would like to make a motion on it, Mr. Chairman, but I certainly do not want to do so if it is going to in some way increase costs. You yourself, Mr. Ryan, say that you have had great difficulty picking the book up and working with it, and with a book that size I can certainly see why.

Senator Croll: Would it not be appropriate, Mr. Chairman, if instead of a motion being made—because you have made your point, senator—the matter were brought to the attention of the proper people so that they could look into it? In any event, senator, you will have another chance during the course of the session.

Senator Everett: That is true, except that subsection (3) of section 11 virtually directs the Queen's Printer to print this in one volume, if he can.

The Chairman: Subsection (3) of section 11 in the bill gives the authority to proceed in the manner you have suggested.

Senator Croll: If practicable and convenient.

The Chairman: One way of dealing with this, since there is broad enough authority to do what we think should be done, would be to pass the bill in this form on this particular heading and then, if the Queen's Printer comes along with a volume of this size, we might invite him to come here to tell us why and to demonstrate to us that it was the most practical and convenient way of doing it.

Senator Flynn: In this connection may I point out that sub-section (1) of section 2 as proposed would give the Governor in Council the right to settle this problem. It says "in such form, on such paper and in such type and shall be bound in such manner as the Governor in Council may prescribe..." This would solve the problem raised by Senator Everett. For one thing—and I suggest we should not go further than this—if the result is not satisfactory we can call some people before the Joint Committee on Printing.

Of course there still remains the problem raised by Senator Macdonald (Cape Breton) with regard to sub-section (3) of section 11, because section 10 of the present act has a second paragraph which reads as follows: "The two Parts shall be bound together in one volume, unless it is impracticable or inconvenient so to do, and in such case the Queen's Printer may authorize the Parts to be bound in two or more volumes." Now, that gives some general direction. They suggest that there should be more than one volume in some instances. Therefore I think that either this second sub-section of section 10 as it exists now should be deleted or sub-section (3) of section 11 as proposed should be deleted. As I see it, it is already covered. I might even suggest that both subsection (2) of section 10 as it is at present and subsection (3) of section 11 as proposed should be deleted.

The Chairman: Senator Flynn, what would happen if under subsection (1) of section 11 to which you are referring the Governor in Council enacted regulations providing for the manner of printing and the form of printing and stipulated certain conditions which in particular circumstances might lead to two volumes. Then if the Queen's Printer, knowing the effect of the regulations, comes along and decides that in those circumstances it is not practical and convenient to do it in two volumes and that it is more practical and convenient to do it in one, there you have a

conflict. You have his judgment and you have the regulations. What happens in those circumstances?

Senator Flynn: That is why I suggest deleting these two paragraphs. That would do away with this problem, because the regulations of the Governor in Council would settle the problem in all cases.

The Chairman: By that you mean to strike out subsection (2) of section 10 in the present act and subclause (3) of clause 11 in the legislation as proposed?

Senator Flynn: Yes.

The Chairman: Then you take away all discretion from the Queen's Printer.

Senator Flynn: Well, the practice may change from year to year and I don't think that legislation should go into that kind of detail.

The Chairman: What would the result be if there wasn't any regulation at the time?

Senator Flynn: Well, then, we will defeat the government if it does not meet its responsibilities.

The Chairman: Do you have any regulations now, Mr. Ryan?

Mr. Ryan: The Queen's Printer exercises his discretion and specifies what the format shall be.

Senator Flynn: The Governor in Council should consult the Queen's Printer before drawing up the regulations.

Senator Everett: Would it not be possible to say in addition to the language in subsection (3) that a volume shall not exceed so many pages?

The Chairman: Senator Flynn, instead of striking out subsection (3) of the bill, what would be the situation if you made it subject to subsection (1)? In that case the Queen's Printer will exercise his own judgment unless there is a regulation which forces him to do something else.

Senator Flynn: Well, it is a question of practice. It seems to me that we are going too far and I do not see the necessity for this paragraph at all. I would not want, for instance, to stipulate that a book should not be thicker than, say, four inches, because if it were one-eighth of an inch over that it would necessitate printing in two volumes where, in fact, I would want it to be printed in one volume.

The Chairman: My own feeling, for what it is worth, is that this is the manner in which they have been doing printing for a long time, and the Queen's Printer has been exercising his judgment in the printing, and apparently whatever may have been conveyed to him by the Department of Justice, there have been no regulations. I would be inclined to pass this in its present form, realizing that at any moment one of our committees, when there is any departure from good judgment as we consider it to be, can make an inquiry about it.

Senator Flynn: With all due respect you have just put your finger on a very important point. We are changing the practice by saying that the Governor in Council will prescribe by regulation the form and type and binding of the volumes. We are introducing a new principle in this bill by subsection (1) of section 11. Therefore we have to be logical and we should delete subsection (2) of section 10 of the existing act and subsection (3) of section 11 of the bill.

The Chairman: We have been assuming that subsection (3) is a direction to the Queen's Printer. It may be a limitation on the regulations by the Governor in Council.

Senator Flynn: This is so obvious that it seems to me to be absolutely superfluous. If the Governor in Council realizes that it can be bound in one volume, then it should be bound in one volume.

The Chairman: And then we get back to the old question.

Senator Macnaughton: Mr. Chairman, didn't you suggest a solution when you said that subsection (3) of section 11 could be made subject to regulation; in other words conferring authority on the Department of Justice to give instructions in this matter?

The Chairman: I would like to direct Senator Flynn's attention to this: that the introductory words to section 11 are "Subject to this section,..."

Senator Flynn: That also applies to subsection (2) with regard to the marginal note and the number of points.

The Chairman: And also to subsection (3).

Senator Flynn: Even if there is no subsection (3), "Subject to this section" will mean something.

The Chairman: But we are giving directions to the Governor in Council.

Senator Flynn: Yes, but in a very specific area relating to type.

The Chairman: And also in relation to what is practical and convenient.

Senator Macdonald (Cape Breton): Why not cut out all but the marginal notes too?

The Chairman: Then, senator, you might end up like the chap who wanted to save money on sending a telegram and finally ended up with nothing but the address.

Senator Flynn: Would the witness tell us if there is any problem in deleting both paragraphs?

Mr. Ryan: I would like to take a little time to consider this in greater depth than I can now. However, I would like to point out that the Department of Justice as such has very little to do, if anything, with the publication of the annual statutes. If we are involved it is by way of giving our proofreading and editorial services to the dummy copy, to make sure it corresponds with the official copy.

If you look at the Publication of Statutes Act, you will see that it states, under "Printing and Distribution of the Statutes":

9. The Clerk of the Parliaments shall furnish the Queen's Printer with a certified copy of every Act of the Parliament of Canada as soon as it has received Royal Assent.

10. (1) The Acts of the Parliament of Canada shall be printed in two separate Parts, . . .

So, it is the relationship between Parliament and the Queen's Printer, and, up to now, the Department of Justice, as such, has had very little to do with it.

I would be hesitant to concur with any removal of these provisions, because I do not know what the mischief was originally they were put in to protect against.

Senator Flynn: Could you inquire and give us an answer on behalf of the department, or on behalf of the Queen's Printer, say, this afternoon at a quarter to 3?

Senator Willis: Why not have the Queen's Printer appear before us, Mr. Chairman?

The Chairman: Frankly, there is some concern about dealing with this bill this week.

Senator Flynn: We could go through it this afternoon, before the Senate meets at 3 o'clock.

The Chairman: I suggest that we meet here at 2.30 for that purpose, and that we exhaust all other points now.

Senator Flynn: And our own counsel maybe could look into this too.

The Chairman: Yes. When we adjourn this morning, we will adjourn until 2.30.

There was one question left. Earlier this morning Senator Everett raised the question, which is not strictly on the bill, but it is something which was discussed the last time we had a meeting, and it was discussed in the Senate yesterday. That is the question of the relationship of the French and English versions, on the matter of interpretation. Have you a specific question, Senator Everett, or would you like Mr. Ryan to make a comment?

Senator Everett: You will recall that at the last hearing the then Minister of Justice told us the method by which the courts would interpret the statute in its new form. I do not recall what was said, and just to refresh my memory I would like to hear it repeated.

Mr. Ryan: Senator, I think the basic rule that the courts have applied is that both the English and French versions must be considered; neither can be ignored. Each is a separate and independent statute of equal authority, and one version may be used to interpret the other. Where doubt arises, that version will prevail which the court judges closest to Parliament's intention. I think that is *The King v. Dubois* (1935) Supreme Court Reports, p. 378. There are some other cases on the point.

The Chairman: The *Dubois* case was that of an employee driving a motor car. I think that he was out on behalf of the radio section of some department of Government, checking for radio interference and things of this kind. There was an accident and, therefore, an action for damages resulted. I think that the Exchequer Court, in the first instance, held that, following the language in the French text, the motor car was a public work, because that seemed to be the language. The Supreme Court of Canada decided, after looking at both the English and French versions, that the motor car was not a public work, but they did go on to find that the man, when operating the motor car, was not in the course of his employment in connection with or on a public work or a public service, and they referred to both statutes. They say there

must be a public work in existence, but certainly the motor car is not a public work. There must be a public work in existence, so you can have an action or employee in connection with that. That is what is meant by considering both texts. I do not think the Supreme Court of Canada decision goes further than that.

Mr. Ryan: No, there are, of course, a number of other decisions.

In a recent survey, which has been mimeographed but not yet published, by the Royal Commission on Bilingualism and Biculturalism, I think it is fair to say that, in fact, only the Supreme Court of Canada and the Quebec courts seem to consult both versions. A recent survey showed that the large majority of judges in provinces other than Quebec almost never consult the French version of statutes, and that the few who do are French-speaking. Even then, quite frequently they do not have them before them, though they may be available in the library.

Senator Carter: In this approved format, is the thickness and quality of paper exactly the same as in the original, as in the one we have been using all along?

Mr. Ryan: Not to the one they have been using all along, senator. To the best of my knowledge, that is thinner paper with a heavier density, and is very similar, as I understand it, to the paper used in this volume of the Revised Statutes of Alberta.

Senator Carter: It is of a comparable quality then?

Mr. Ryan: Yes, it is of a comparable quality.

The Chairman: If there are no other questions, we seem to have dealt with the provisions of the bill, and I suggest that we stand adjourned until 2.15 p.m., just to give us a little more time to consider the question Senator Flynn raised in connection with the effect on the authority given to the Governor in Council, and then the direction with respect to "practical and convenient" in the printing. Mr. Ryan will seek whatever information he can in the meantime—or to use his expression, he will "examine it in depth," and then we will hear him at 2.15.

The committee adjourned until 2.15 p.m.

Upon resuming at 2.15 p.m.

The Chairman: I call the meeting to order. We considered Bill S-2 this morning, and we

adjourned until this time in order to see what a study in depth by Mr. Ryan in the meantime might produce in relation to section 10 of the Publication of Statutes Act, and particularly subsection (2) of section 10.

Section 1 of Bill S-2 proposes to strike out a portion of subsection (3) of section 10, and it can be seen what portion it is proposed be stricken out.

We were considering this morning the striking out also of subsection (2) of section 10, on the basis that clause 2 of the bill provides for the printing of the statutes in such manner as the Governor in Council may prescribe by regulation.

What we were saying was that if you give the Governor in Council the power by regulation to prescribe as to format, paper, and type you are giving him the power to provide by regulation for all the administrative work in connection with the printing and the publication of statutes. If we left subsection (2) of section 10 in then we might be creating a conflict, because there the authority seems to be given to the Queen's Printer. Therefore, we felt we would strike out subsection (2).

Hon. Mr. Connolly (Ottawa West): That is, subsection (2) of section 10?

The Chairman: I will read it to you. I should tell you first of all that subsection (1) provides:

The Acts of the Parliament of Canada shall be printed in two separate Parts, the first of which shall contain such of the said Acts and such Orders in Council, proclamations and other documents, and such Acts of the Parliament of the United Kingdom, as the Governor in Council deems to be of a public and general nature or interest in Canada and directs to be inserted—

And then it continues

—and the second Part shall contain the remaining acts of the session, and shall be printed after the first Part.

Pausing there for a moment I would say that it amused me a little to see that Part II shall be printed after Part I, because ordinarily one would think that Part II following Part I would naturally come after it in the printing without any legislative sanction as to the way to do it.

Senator Kinley: Do they not print the public acts first, and then the private acts?

The Chairman: Yes, that is what it means. Subsection (2), the subsection that we are proposing to strike out, reads:

The two Parts shall be bound together in one volume, unless it is impracticable or inconvenient so to do, and in such case the Queen's Printer may authorize the Parts to be bound in two or more volumes.

If, under this bill, we give authority to the Governor in Council to determine by regulation the format, the paper, and the type, then we may be creating a conflict as between two authorities, and it will not be clear as to when the Queen's Printer acts and when the Governor in Council acts. We thought, since we are entering into a new phase of printing and publication, and are to some extent feeling our way in this, that we should give considerable power and considerable flexibility to the Governor in Council, and I think we can assume that if there is any place where one might expect to get good management and administration in the public interest it would be via the Governor in Council.

Senator Connolly (Ottawa West): Instead of having to come back to Parliament for this authority in respect of small things?

The Chairman: That is right.

Senator Kinley: They cannot change any of the Statutes.

The Chairman: No, this refers to just the printing.

Having heard those few remarks of mine, Mr. Ryan, have you any comments to make at this time?

Mr. Ryan: Only a very few, Mr. Chairman. In the time available I was not able to obtain any instructions, so I am in no position to put forward policy arguments, one way or the other. I might say on the suggestion that has just been made, that the only reservation I would have as a draftsman would be about the words "and shall be printed after the first Part". If that is a penetrating glimpse of the obvious then, of course, it is of no concern.

Senator Connolly (Ottawa West): That is a very good description.

The Chairman: You are to be commended for that phrasing.

Senator Connolly (Ottawa West): I imagine the Chairman wishes he had thought of saying it in that way.

Mr. Ryan: So far as I can see, the proposals you are putting forward here do not, in the least, affect the intent of the Government bill to accomplish the purpose intended of making it coincide with the Revised Statutes in format, paper, and binding. That is all I have to say regarding that.

The Chairman: This morning the committee directed an amendment to section 1 to strike out the words "in the most economical manner". It was felt that it was being a bit presumptuous in the first instance to give such a direction, and there was an amendment this morning striking that out.

Now, in view of the fact that we are proposing also to strike out subsection (2) of section 10 the amendment would read—since section 1 deals with an amendment to section 10, in any event it just means enlarging it somewhat. The amendment that is being proposed would be:

Strike out clause 1 and substitute therefor the following:

1. Subsection (2) of section 10 of the *Publication of Statutes Act* and all that portion of subsection (3) of the said section that precedes paragraph (a) thereof are repealed and the following substituted therefor:

'(2) Copies of the volume or volumes of the Acts referred to in subsection (1) shall be printed by the Queen's Printer, who shall, as soon after the close of each session as practicable, deliver or send by post or otherwise the proper number of copies to'

2. Strike out clause 2 and substitute therefor the following—

And then we go on and enact as it appears in clause 1 of the bill except we take out the words "in the most economical manner". It is very intelligible in this form. Now, if there is a motion proposing—

Senator Flynn: I suggest that Senator John M. Macdonald should move that, because it meets with the objection he first raised.

The Chairman: Senator Macdonald, is it moved by you?

Senator Macdonald (Cape Breton): I move it.

Senator Inman: I will second the motion.

The Chairman: Is there any honourable senator who wishes to make a presentation on this motion? All those in favour?

Hon. Senators: Agreed.

The Chairman: You will notice that there are three subsections in clause 2 of the bill, and the first one is made subject to subsections (2) and (3), yet, if you forget for the moment those words "Subject to this section", you have a direction that the statutes shall be printed in the English and French languages in such form, on such paper, and in such type, and that they shall be bound in such manner as the Governor in Council may prescribe by regulation. If you go on and read subsections (2) and (3) you will see that some limitations are put on the action by regulation, because they stipulate the form in which the marginal notes shall be printed, and also provide that, if practicable and convenient, the Statutes shall be bound in one volume.

Now, certainly the view in the committee this morning was that these are matters that would be controlled by regulation in the power that you give the Governor in Council in the first subsection to deal with the printing in the English and French languages.

I would construe "such form" to extend not only to the format but also to the inclusion of the French and English languages on the same page, if that is a decision he wishes to make. It does not specifically provide for that form of printing here because it is a matter of regulation. I would say that whether you are going to print in one volume or more than one volume depends on how much legislation there is, and that is something which should be regulated by the Governor in Council. They should have more flexibility in dealing with that and it is up to them, in a proper situation, to justify the expenditure of money in doing the printing. For instance, we have a Printing Committee of the Senate.

Senator Flynn: It is a joint committee.

The Chairman: If that committee feels that the expenditures are in excess of what is practical in the circumstances, it can call the proper officials here and make inquiry. Why should we attempt to include in legislation administrative matters—and some of them pretty administrative details down the line? I think that is the subject matter of regulation, properly speaking. Usually, our complaint is the opposite, that by regulation they are trying to legislate. This time, I think they are putting these subsections 2 and 3, which might well be administrative matters, in the

legislation, and we do not need it, because the authority is there, anyway.

Therefore, what is proposed is that section 2 would read as follows. We strike out section 2 as it appears in the bill and then say:

2. Section 11 of the said Act is repealed and the following substituted therefor:

11. The Statutes shall be printed in the English and French languages in such form, on such paper and in such type and shall be bound in such manner as the Governor in Council may prescribe by regulation.

In other words, legislatively we have given them the authority in this direction. We have created the authority and the Governor in Council can regulate it by regulation. Is that the view of the committee? If so, I think somebody might move it.

Senator Molson: I so move.

Senator Connolly (Ottawa West): I wonder if Mr. Ryan has any comment to make on that?

Mr. Ryan: In subsection (2)—and this is just for information—also, apart from the seven-point type in the margin, there is a requirement to refer to the year and chapter of any previous enactment that the text amends, repeals or changes. That particular direction sometimes finds itself in rules, orders and regulations about the printing of bills and statutes of legislatures, because of the convenience involved, of members who are studying a bill, enabling them to be referred to the chapters and amending bills, particularly to the sections. For instance, when you are dealing with the Criminal Code, unless you find a marginal note of that kind, you will not know how many amendments there have been during the year. That is why I would draw it to your attention. One could live without it. If you have it in your rules, you know it will be done, but I do not know if it will be in them.

The Chairman: Neither do we, but I would expect that the regulation would be wisely drawn.

Mr. Ryan: Yes, but this has been over the years a protection of the legislative body and a convenience of the legislative body, rather than a convenience of the executive.

The Chairman: I would have thought it was for the convenience of those who might have to consult the statutes.

Mr. Ryan: Mr. Chairman, I am not arguing against it, I am just putting the point.

Senator Connolly (Ottawa West): There is certainly no question in the minds of the members of committee who are lawyers, with reference to the year and chapter of previous enactments being of great convenience. I apologize, as unfortunately I was not able to be here this morning. Might it be wise, rather than strike out all of subclause 2 of the bill, all of clause 2 of the bill, to strike out the second line and say that the marginal notes of the statutes shall refer to the year and chapter of any previous enactment that the text amends, repeals or changes.

The Chairman: What I assume is that the Governor in Council is called on to make regulations in connection with the printing of the English and French statutes, as to their form. If we stop at that for a moment, obviously he has to say in what form he shall convey the English and French on the same page. This is the decision which will be made by an order in council, because this section of the statute does not say anything about that. It does not say that they must be bilingual to the extent of French and English on the same page, so that is a decision he has to make.

Another decision he has to make is as to the content that is going to be put on each page, if it is convenient or if it is for the protection of those using it, even for practising lawyers or for Parliament, as well as Members of Parliament—that would be the form the regulation would prescribe.

Senator Connolly (Ottawa West): In other words, they have thought about it and it will be in the regulation, if it does not appear in the act.

The Chairman: Yes. Senator Molson has moved this amendment. I did not hear who seconded it.

Senator Connolly (Ottawa West): You do not need a seconder.

The Chairman: Those in favour? Contrary, if any? It is agreed.

Shall I report the bill as amended?

Hon. Senators: Agreed.

Senator Kinley: Mr. Chairman I suppose now that every member will be getting the statutes in French, we will all get one which is in French and English under the same cover. In every part of Canada will that be official, in every court in Canada?

The Chairman: Yes. It is now, in all federal courts.

Senator Kinley: Can you plead in either language in the courts in Canada?

The Chairman: In the federal courts.

Senator Kinley: What about the Exchequer Court?

The Chairman: That is a federal court.

Senator Kinley: And the French courts—the county courts?

The Chairman: No.

Senator Kinley: You could not plead in the county court?

The Chairman: No.

Senator Kinley: They are under the control of the province?

Senator Connolly (Ottawa West): You can use French in Quebec.

The committee adjourned.



First Session—Twenty-eighth Parliament
1968

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING COMMITTEE
ON

BANKING AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 2

Complete Proceedings on Bill S-8,

intituled:

"An Act to amend the Supreme Court Act".

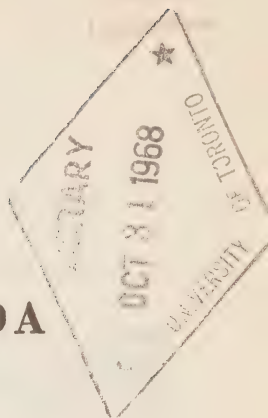
WEDNESDAY, OCTOBER 9th, 1968

WITNESS:

Department of Justice: D. H. Christie, Assistant Deputy
Attorney General.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968



THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Fergusson	McDonald
Aseltine	Gélinas	Molson
Beaubien (<i>Bedford</i>)	Gouin	O'Leary (<i>Carleton</i>)
Beaubien (<i>Provencher</i>)	Grosart	Paterson
Benidickson	Haig	Pearson
Blois	Hayden	Phillips (<i>Prince</i>)
Bourget	Hays	Rattenbury
Burchill	Inman	Roebuck
Carter	Irvine	Smith (<i>Queens-</i> <i>Shelburne</i>)
Choquette	Isnor	Thorvaldson
Connolly (<i>Ottawa West</i>)	Kinley	Vaillancourt
Cook	Laird	Walker
Croll	Lang	Welch
Desruisseaux	Leonard	White
Dessureault	Macdonald (<i>Cape Breton</i>)	Willis—(49)
Everett	MacKenzie	
Farris	Macnaughton	

Ex Officio members: Flynn and Martin.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, October 8th, 1968:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Phillips (*Rigaud*), seconded by the Honourable Senator Robichaud, P.C., for second reading of the Bill S-8, intituled: "An Act to amend the Supreme Court Act".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Phillips (*Rigaud*) moved, seconded by the Honourable Senator Robichaud, P.C., that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, October 9th, 1968.

(2)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien (*Bedford*), Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Fergusson, Flynn, Haig, Inman, Irvine, Isnor, Kinley, Laird, Leonard, Macnaughton, Molson, Rattenbury, Smith (*Queens-Shelburne*), Thorvaldson, Walker, White and Willis.—(27)

Present, but not of the Committee: The Honourable Senator Phillips (*Rigaud*).

In attendance:

E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Upon motion, it was *Resolved* to recommend that 800 copies in English and 300 copies in French of these proceedings be printed.

Bill S-8, "An Act to amend the Supreme Court Act", was read and considered, clause-by-clause.

The following witness was heard:

Department of Justice:

D. H. Christie, Assistant Deputy Attorney General.

Upon motion, it was *Resolved* to report the said Bill without amendment.

At 10.10 a.m. the Committee adjourned to the call of the Chairman.

ATTEST.

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, October 9th, 1968.

The Standing Committee on Banking and Commerce to which was referred the Bill S-8, intituled: "An Act to amend the Supreme Court Act", has in obedience to the order of reference of October 8th, 1968, examined the said Bill and now reports the same without amendment.

Your Committee recommends that authority be granted for the printing of 800 copies in English and 300 copies in French of its proceedings on the said Bill.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Wednesday, October 9, 1968.

The Standing Committee on Banking and Commerce, to which was referred Bill S-8, to amend the Supreme Court Act, met this day at 9.30 a.m. to give consideration to the bill.

Senator Salter A. Hayden (Chairman) in the Chair.

The Chairman: Honourable senators, we have one bill before us this morning, Bill S-8, which proposes certain amendments to the Supreme Court Act. Since we are dealing with this bill in the first instance, I suggest that we print the proceedings.

Upon motion, it was *Resolved* that a verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 copies in French be printed.

The Chairman: Honourable senators we have with us Mr. D. H. Christie, Assistant Deputy Attorney General whom I judge most of you here know. Since the bill does not enunciate a particular principle but consists of a series of amendments, the most convenient way would be to go through it section by section and get from Mr. Christie whatever explanation is required.

Hon. Senators: Agreed.

The Chairman: Mr. Christie, would you deal with Section 1 of the Bill?

Mr. D. H. Christie, Assistant Deputy Attorney General, Department of Justice: Mr. Chairman and honourable senators, the first clause of this bill would amend section 36 of the Supreme Court Act. That is the section under which the general right of appeal to the Supreme Court is given. The limitation prescribed now is \$10,000 and the right of appeal that is given now relates to questions of law and fact or mixed law and fact. The amendment would confine appeals under that section to questions of law alone.

The Chairman: That is the only change?

Mr. Christie: That is the change.

The Chairman: Does not "mixed law and fact" involve a question of law?

Mr. Christie: To a point, but they have the three categories that are commonly referred to—law, fact, and mixed law and fact.

The Chairman: But this does not say pure law in the sense of no intrusion of fact. Would the amendment still permit cases where fact is intertwined with law and the law is dependent on that? Has not mixed law and fact been held to involve questions of law when you are trying to justify the right of appeal?

Mr. Christie: I do not think so, senator. As a matter of fact, if you have a real mixture of fact with law and the right of appeal related to law alone, then there is no jurisdiction.

Senator Thorvaldson: Who makes the decision as to whether it is law alone or mixed law and fact, Mr. Christie?

Mr. Christie: If there is any dispute about it, it would be the court.

Senator Thorvaldson: The whole court or part of the court or one judge?

Mr. Christie: This section deals with appeals and not with applications for leave so it would be the court, it would be either five, seven or nine judges.

Senator Thorvaldson: So actually there would be an appeal that reaches the court and then the court makes a decision that this is a question of mixed law and fact and consequently will not deal with it? Would that be how it would work?

Mr. Christie: That would be it, but if justice required that the court deal with the case, they could grant leave, under section 41. Section 36 gives an appeal as of right.

Senator Kinley: As a layman, may I ask what is the distinction which decides whether it is a question of law or fact or mixed law and fact?

Senator Thorvaldson: That is the \$64,000 question.

The Chairman: Certainly there is a fundamental difference as to fact. A question of fact would mean a decision, on the basis of evidence that has been adduced, as to the weight of that evidence. If you have witnesses going into the witness box who are testifying from different points of view, and you have a set of facts that is not all one way, how do you make a decision then?

Senator Kinley: It is intertwined as to what is fact and what is law?

The Chairman: There is a question of fact to determine, what is the foundation of the case in fact, forgetting all about the application of law.

Senator Kinley: Of course if the evidence is false evidence, there would be a matter of fact to determine?

The Chairman: Yes, and that would involve the right of the judge to say "I believe the witness" or "I do not believe the witness".

Senator Kinley: That would be a matter of fact?

The Chairman: Yes. Are there any other questions? Shall we carry this section?

Hon. Senators: Carried.

The Chairman: It is carried.

Mr. Christie: Under section 39 of the Supreme Court Act it is possible with leave of the provincial courts of appeal to go direct to the Supreme Court without the provincial appellate courts considering the case. The limit prescribed in section 39 at present is \$2,000. When section 36 was amended in 1956 to up the figure to \$10,000 in that section, as a matter of logic they should have moved the figure from \$2,000 to \$10,000 in section 39. Owing to an oversight it was not done at that time and this is picking up that oversight.

The Chairman: For instance, if I applied to a single judge in the Supreme Court of Ontario for a writ of habeas corpus and he refused it, do you mean that I could by-pass

the Court of Appeal in Ontario and go directly with leave to the Supreme Court of Canada?

Mr. Christie: No, because the appeals in habeas corpus in criminal matters are dealt with under the Criminal Code specifically.

The Chairman: That is correct.

Mr. Christie: So you would have to go in accordance with section 691 of the Criminal Code as amended in 1965.

The Chairman: You would have to go to the Court of Appeal with leave in the province and, if they turned you down, then you would have an appeal as of right to the Supreme Court of Canada.

Mr. Christie: Yes.

Senator Carter: I understand that a person now with a suit involving an amount under \$2,000 will not, if we pass this section, be able to proceed. The amount would have to be up to \$10,000 before he could appeal. Is that right?

The Chairman: Unless it involves a question of law or unless he gets leave.

Senator Carter: If this is passed you will still be able to get leave for a lesser amount?

The Chairman: That is right.

Mr. Christie: Under section 41.

Senator Thorvaldson: In other words, in every case where jurisdiction is restricted the litigant is entitled to apply for leave. Would that be a correct statement, Mr. Christie?

Mr. Christie: Not in every case. The rights of appeal in criminal matters are generally prescribed under the Criminal Code, but for civil matters I think basically that is a correct proposition.

Senator Connolly (Ottawa West): Mr. Chairman, may I ask Mr. Christie if in the rules of the Supreme Court of the United States there is a comparable section governing a minimum amount of money?

The Chairman: A minimum in what sense.

Senator Connolly (Ottawa West): In the sense of \$10,000.

The Chairman: We are establishing here in respect of *per saltum* appeals, a \$10,000 minimum, but that has been in section 36 since 1956 or 1957. What we are saying here is that

you can appeal, if you get leave of the highest court, notwithstanding that the limit works against you.

Senator Connolly (Ottawa West): I realize that. What I am asking is whether there is such a minimum in the rules of the United States Supreme Court?

The Chairman: I do not know about that, but there is a minimum in the Supreme Court of Canada Act. That is the \$10,000 limit.

Senator Flynn: Would you indicate the reasons for restricting the appeals as we are doing now?

The Chairman: I think that is a fair question.

Mr. Christie: Are you going back to section 36, senator?

Senator Flynn: I am concerned with both sections, 36 and 39.

Mr. Christie: Section 39 is really something that should have been picked up back in 1956. So far as section 36 goes, the basic reason for restricting the jurisdiction that now exists under that section is that there has been a tremendous increase in the workload of the court and it is considered that the court should concentrate on settling important questions of law rather than questions of fact. They do not want to get into a situation where, for example, in an automobile negligence case, there are several volumes of evidence and counsel appearing before the supreme Court are going over the evidence of the various witnesses because there is a jurisdiction on questions of fact. Basically it is for those reasons. Now, I have here a letter which I received from the Registrar of the Supreme Court the day before yesterday. He illustrates the terrific increase in the workload of the court. For example, in 1940 they heard 14 motions and 72 appeals. In 1953 they heard seven motions and 101 appeals. In 1962 they heard 104 motions and 121 appeals. In 1967 they heard 118 motions and 167 appeals.

Senator Flynn: These facts are important.

The Chairman: Yes, these limits are. But, actually, the statistics in the 60s, if they indicate anything, would indicate that the \$10,000 limit on appeals has not been a bar to appeals, because the number of appeals has substantially increased. The only limit we are adding today is on *per saltum* appeals, and there have been many of those.

Senator Flynn: I think the important point is that, owing to the increase in the volume of work in the Supreme Court, we should suggest these amendments and restrictions.

The Chairman: Section 2 carries. Section 3 simply provides for a quorum of the court in different proceedings.

Mr. Christie: That is correct. Generally speaking, applications for leave to the Supreme Court are heard by three judges, but there are a number of statutes which provide that a single judge can hear an application for leave to appeal. Now, the application for leave can be extremely important because, if you are not successful, your access to the court is cut off. Thus, it is felt that at least three judges should hear all applications for leave, and that will be the effect of this amendment.

Senator Connolly (Ottawa West): I do not object to the principle for the reason that you gave to Senator Flynn in respect of restricting appeals, but once you establish a quorum of three for all applications for leave, you are then loading the court with quite a bit more work, are you not? At least you are loading the judges as a whole with more work because you require more of them to attend on these applications.

Mr. Christie: Yes. It will have that effect because where one judge could dispose of the matter before, three will now have to consider it.

I might say that there will be no difference where the Crown is appealing in a murder case. The quorum will continue to be five. There is no change in that.

Senator Thorvaldson: Mr. Chairman, may I ask a question? Mr. Christie gave some figures a little while ago in regard to the number of motions coming before the court. I take it that these applications for leave to appeal were included in what you referred to as motions?

Mr. Christie: Yes, that is correct.

Senator Thorvaldson: Thank you.

The Chairman: Carried.

Senator Kinley: Is there anything in this act with respect to a case of delayed judgment; that is, one that is unduly delayed by the court?

The Chairman: I think what you mean to ask is: if there is a lengthy delay in delivering a judgment, what are the rights of the litigants?

Senator Kinley: The trial goes on but the judge does not give his decision. Sometimes it is delayed for a very long time. Is there any recourse for the litigants?

The Chairman: At the level of the Supreme Court of Canada I think the answer must be no. I think we have some provisions in the lower courts.

Mr. Christie: Not that I am aware of, senator. As I understand it the only recourse that litigants have is to go to the Chief Justice of the court and hope that it will be dealt with as a matter of administration.

Senator Kinley: I know of judges who have died before delivering a judgment.

The Chairman: There are provisions in the Exchequer Court Act to cover that situation. Over the years I have been involved in a few such cases. You can either have a new trial or you can agree to have another judge take the transcript of the evidence, hear argument, and then give his judgment.

Senator Thorvaldson: But that is only in the Exchequer Court, is it not?

The Chairman: I know that it is in the Exchequer Court and I think it is in the Supreme Court of Ontario as well. I do not know about the other provincial courts.

Senator Thorvaldson: I know it is in the Exchequer Court because in one case I had to go through an extra week of trial. The judge died with only one hour to go in the trial.

The Chairman: You should not have been so hard on him.

Senator Flynn: While we are discussing section 44A it might be appropriate to ask the witness if the department has considered amending section 41, which presently gives complete discretion to the court to grant leave to appeal. Has the department considered whether some guidelines should be inserted there?

Mr. Christie: Arising out of what considerations, senator?

Senator Flynn: Well, the court having full discretion, the door is open to any decision, and that would seem to run contrary to the

purpose or objectives sought by this act, namely, to restrict the number of appeals and diminish the work of the court.

Mr. Christie: Oh, no, it is not intended to in any way interfere with the discretion that the court has under section 41, because it is felt they should have a wide discretion because justice, in a particular case that cannot be now anticipated, might require review by the Supreme Court.

Senator Flynn: Have you any statistics showing the proportion of leaves which are granted out of the number of applications made?

Mr. Christie: I do not have those statistics. I could get them, no doubt.

Senator Flynn: Have you any idea what the number is?

Senator Walker: Mr. Chairman, I would like to point out that in the week of October 1 there were eight applications. One was granted, one was reserved, and the rest were dismissed. In the week of October 7 there were nine applications. Two were granted, three were reserved, and the rest were dismissed. In other words, they have cut down the applications very considerably.

The Chairman: You mean they have cut down the number of successful applications.

Senator Walker: Yes, where leave to appeal is granted.

Senator Croll: Do you know whether any consideration has been given to increasing the number of judges of the court?

Mr. Christie: I have no information on that at all, senator.

The Chairman: It would be a question of policy.

Senator Croll: I realize that, but I thought it was in the realm of discussion.

Senator Thorvaldson: Of course these amendments would minimize the need for increasing the size of the court. The whole purpose of these amendments is to reduce the volume of work.

The Chairman: If you look at the statistics, I am not at all sure that the limitations so far have done that.

Senator Thorvaldson: But that is what these are intended to do.

Senator Burchill: How is it possible for a single judge to hear an appeal? It says here "The proposed amendment will eliminate this redundancy and, in addition, would require that all applications for leave to appeal to the Supreme Court be heard and disposed of by the court rather than, as in some cases at present, by a single judge of the court."

Mr. Christie: That is not in the present act. That is under special acts.

Senator Burchill: Would the amendment wipe that out?

Mr. Christie: It wipes it out. Single judges do not hear appeals, but applications for leave to appeal.

The Chairman: Shall that section carry?

Hon. Senators: Carried.

The Chairman: Section 4 simply strikes out a heading. I am interested to know why you are doing that. It strikes out the heading preceding section 57 and sections 57 to 60 of the said act are repealed.

Mr. Christie: Because section 57 deals with habeas corpus in criminal matters, and we are doing away with that jurisdiction in the court, therefore the heading goes out with the provisions to which it relates since they are being repealed. You see the heading deals with habeas corpus and that habeas corpus jurisdiction will be removed if the act passes, and therefore the heading goes with the sections.

The Chairman: What you are saying is that if we didn't repeal the heading, the heading would remain in the statute even though the section disappeared.

Mr. Christie: I see your point there. I suppose that as a practical matter the heading would go anyway.

The Chairman: However, we are not doing any harm by passing this. Shall this carry?

Hon. Senators: Carried.

The Chairman: There is, however, one matter. By repealing section 57, you have thrown any consideration of habeas corpus which the Supreme Court of Canada might have to the appellate jurisdiction only.

Mr. Christie: That is correct.

The Chairman: Arising out of that there are a couple of things I thought I should

bring to the attention of the committee. I am not against confining the jurisdiction in the Supreme Court of Canada to appellate jurisdiction, but I did go through this matter some years ago when I was more active in the courts and there had been several convictions under sections of the Criminal Code. This person had been sentenced to a very substantial fine on each charge and also to a jail term. In due course and within the limitations provided by law, the Crown appealed the sentence only. In the meantime the appeal did not come on for hearing for almost a year or maybe longer and the man paid his fine and had served his time and was a free man walking around when the appeal was heard. The court of appeal increased the sentence. Notwithstanding the proposition that I put to them that once I have served my time under a sentence I have the equivalent of a pardon under the Royal Seal, they decided that the sentence was not the kind of sentence that took all jurisdiction and terminated the proceedings until the sentence had been finally established by the last authority that had the right to deal with it which was the court of appeal. Then the question was what to do and where do you raise the question since there is no right of appeal from sentence to the Supreme Court of Canada. The procedure decided on was an application to a single judge of the Supreme Court of Canada for a writ of habeas corpus which he refused and then the court of appeal of the Supreme Court of Canada also refused it. But in the light of what is being done now, at least the man had his day in court. If you remember a few years ago Mr. Matheson, a member of the Commons, was here with some amendments to the Criminal Code dealing with the question of shopping around from judge to judge in the hope that you might get one finally who would issue a writ. Under the law as it now stands I can go to a single judge in the Province of Ontario and apply for a writ and if he refuses I can appeal to the appellate court. If the appellate court refuses I can go as of right to the Supreme Court of Canada, but the anomaly in the situation I have laid out is this: that if after the court of appeal had given a decision against the argument that there was no jurisdiction in the court, you then went to a single judge of the Supreme Court of Ontario for a writ of habeas corpus, he would feel bound by the decision of the court of appeal and would

refuse. Then you would go to the appellate court which had already decided it and you would end up in the Supreme Court of Canada anyway.

I am wondering whether full thought has been given to the position where habeas corpus might be invoked in relation to jurisdiction to change our very sentences, and whether what we are doing makes it abundantly certain that the right exists in some form to get somewhere for a review of habeas corpus in these cases.

Mr. Christie: Well, as you point out, senator, the Supreme Court of Canada has no jurisdiction over sentences. It does now have a jurisdiction as a result of the 1965 amendments to the Criminal Code to deal with habeas corpus in criminal matters and it is considered that that jurisdiction vested in that court by that amendment of 1965 is a full jurisdiction to deal with habeas corpus matters, and it is considered that the original jurisdiction that is the concurrent jurisdiction that single judges of that court now have should in the light of these amendments be done away with.

The Chairman: What I am thinking of is this: Instead of having to go to a single judge and then to the court of appeal and so ending up in the only court where there can be a review, the Supreme Court of Canada, why should there not be a right of appeal directly to the Supreme Court of Canada from whatever court has made the decision regarding jurisdiction?

Mr. Christie: You mean there should be a right of appeal direct to the Supreme Court circumventing the provincial Appellate Court?

The Chairman: Yes, by the *per saultum* appeals provision.

Senator Thorvaldson: Has the jurisdiction of the Supreme Court in original habeas corpus matters been used at all in the last few years?

Mr. Christie: It has. I have had only one application myself, but I would say that it has been used not infrequently in recent years. There was quite a significant case two or three years ago which involved Dr. Schumacher from Saskatchewan. He invoked the original jurisdiction.

Senator Connolly (Ottawa West): Having tried elsewhere also.

Senator Thorvaldson: In other words he shopped around up to the Supreme Court.

Mr. Christie: As I recall it he did make a motion in Saskatchewan but he also came down to the Supreme Court.

The Chairman: Any other questions? I suppose the changes being made here are all for the same purpose, that is tightening up the procedures and trying to eliminate appeals where you are not really doing any injustice but merely preventing the court from being overloaded.

Mr. Christie: That is correct, sir.

The Chairman: We come now to clause 5. This is procedural, I take it?

Mr. Christie: Under section 63 of the Supreme Court Act, provision is made that, in the absence of some statutory provision or an applicable rule in the rules of the Supreme Court, proceedings in appeals shall be in conformity with the practice of the Judicial Committee of Her Majesty's Privy Council. The rules of the Judicial Committee are very general in nature and of little practical value as a source of supplementary rules of procedure. Under the proposed amendment, the supplementary rules, as they may be required, will be prescribed by the Chief Justice or the senior puisne judge present. As a matter of fact, in regard to the rules of the Judicial Committee, I imagine that the ordinary practitioner would find it difficult to put his hand on a set of them.

The Chairman: This is another step in the improvement of our procedure, so that this happens within Canada. Is the clause carried?

Hon. Senators: Carried.

The Chairman: Clause 6?

Mr. Christie: Under the present act, the rules fail to specify the time within which notice of appeal shall be filed. It is considered desirable that they should specify the time to be 21 days from the time prescribed by section 66—which is the time for launching an appeal—or such extended time as the judge may, under special circumstances allow.

The second point is that—this deals with questions when security is deposited in cash—it is considered there should be no need to make application to approve the same, and when the security has been depos-

ited, all the parties to the action should be notified within 7 days. Again, these are technical procedural matters.

The Chairman: The various subsections deal with the lodging of security. Shall clause 6 carry?

Hon. Senators: Carried.

The Chairman: Clause 7.

Mr. Christie: Clause 7 is another oversight that is being picked up. When section 71 of the Supreme Court Act was amended under section 66, it provided that when security has been deposited as required by section 66, any judge of the court may issue his fiat to the sheriff, to whom any execution on the judgment has issued, to stay the execution. We should have included in that section reference to section 70 as well as to section 66, because section 70 deals with the giving of security for the purpose of staying execution.

The Chairman: That was the purpose of it, and you wanted it to be effective?

Mr. Christie: Yes. We should have included section 70 in 1956.

The Chairman: Shall the clause carry?

Hon. Senators: Agreed.

The Chairman: It is carried. Clause 8?

Mr. Christie: Under the present law, an appellant can discontinue his appeal by simply giving notice to the other side. For obvious reasons, it is proposed that the appellant should also give notice to the court, so that the court will have formal notice that the litigation is at an end.

The Chairman: That seems reasonable.

Senator Thorvaldson: I wonder how it would be if it were overlooked?

The Chairman: Shall the clause carry?

Hon. Senators: Agreed.

The Chairman: It is carried. Clause 9?

Mr. Christie: Section 106 of the Supreme Court Act provides for the use of law stamps. The use of these stamps is considered unnecessary to any reasonable accountancy system. On the advice of the late Auditor General, Mr. Watson Seller, this amendment is proposed, to do away with this method.

The Chairman: Shall clause 9 carry?

Hon. Senators: Agreed.

The Chairman: Clause 10?

Mr. Christie: This is consequential on clauses 3 and 4.

The Chairman: Regarding the list of statutes which you have appended, heretofore you would have to go to these special acts in order to find what the rights were to get to the courts?

Mr. Christie: That is correct.

The Chairman: Now you are attaching them here?

Mr. Christie: We are leaving them in the special acts but we are amending them so that if you are making application for leave under a special act you have notice in the special act that it will be heard by three judges.

The Chairman: Clause 10 refers to the schedule, so it ties it up?

Mr. Christie: That is correct.

The Chairman: Shall clause 10 carry?

Hon. Senators: Agreed.

The Chairman: Clause 11 deals with the proclamation. Shall clause 11 carry?

Hon. Senators: Agreed.

The Chairman: Shall I report the bill without amendment?

Hon. Senators: Agreed.

The committee adjourned.



First Session—Twenty-eighth Parliament

1968

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THE SENATE OF CANADA

PROCEEDINGS OF THE STANDING COMMITTEE ON

BANKING AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 3

Complete Proceedings on

- Bill S-4, intituled: "An Act respecting the marking of articles containing precious metals".
- Bill S-10, intituled: "An Act to amend the Customs Act."
- Bill S-6, intituled: "An Act respecting The Canada Trust Company".
- Bill S-7, intituled: "An Act respecting The Huron and Erie Mortgage Corporation".

WEDNESDAY, OCTOBER 16th, 1968

WITNESSES:

- Department of Consumer and Corporate Affairs:* The Hon. Ron Basford, Minister; G. R. Lewis, Chief, Precious Metals Division.
- Department of National Revenue:* J. G. Howell, Assistant Deputy Minister, Operations; A. R. Hind, Assistant Deputy Minister, Customs.
- Department of Insurance:* R. Humphrys, Superintendent.
- Canada Trust Company and Huron and Erie Mortgage Corporation:* E. D. L. Miller, Assistant General Manager (Finance).

REPORTS OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Fergusson	McDonald
Aseltine	Gélinas	Molson
Beaubien (<i>Bedford</i>)	Gouin	O'Leary (<i>Carleton</i>)
Beaubien (<i>Provencher</i>)	Grosart	Paterson
Benidickson	Haig	Pearson
Blois	Hayden	Phillips (<i>Prince</i>)
Bourget	Hays	Rattenbury
Burchill	Inman	Roebuck
Carter	Irvine	Smith (<i>Queens-</i>
Choquette	Isnor	<i>Shelburne</i>)
Connolly (<i>Ottawa West</i>)	Kinley	Thorvaldson
Cook	Laird	Vaillancourt
Croll	Lang	Walker
Desruisseaux	Leonard	Welch
Dessureault	Macdonald (<i>Cape Breton</i>)	White
Everett	MacKenzie	Willis—(49)
Farris	Macnaughton	

Ex Officio members: Flynn and Martin.

(Quorum 9)

ORDERS OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, October 8th, 1968:

“With leave of the Senate,

The Honourable Senator Hasings moved, seconded by the Honourable Senator Prowse:

That the Order of the Senate of Thursday, 3rd October, 1968, referring the Bill S-10, intituled: “An Act to amend the Customs Act”, to the Standing Committee on Finance be rescinded; and

That the said Bill be referred to the Standing Committee on Banking and Commerce.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.”

“Pursuant to the Order of the Day, the Honourable Senator Benidickson, P.C., moved, seconded by the Honourable Senator Croll, that the Bill S-4, intituled: “An Act respecting the markings of articles containing precious metals”, be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Benidickson, P.C., moved, seconded by the Honourable Senator Croll, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.”

Extract from the Minutes of the Proceedings of the Senate, Wednesday, October 9th, 1968:

“Pursuant to the Order of the Day, the Honourable Senator Haig moved, seconded by the Honourable Senator Blois, that the Bill S-6, intituled: “An Act respecting The Canada Trust Company”, be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Haig moved, seconded by the Honourable Senator Blois, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.”

“Pursuant to the Order of the Day, the Honourable Senator Haig moved, seconded by the Honourable Senator Blois, that the Bill S-7, intituled: “An Act respecting the Huron and Erie Mortgage Corporation”, be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Haig moved, seconded by the Honourable Senator Blois, that the Bill be referred to the Standing Committee on Banking and Commerce.”

The question being put on the motion, it was—

Resolved in the affirmative.

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, October 16th, 1968.

(3)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Beaubien (*Bedford*), Benidickson, Carter, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Everett, Fergusson, Gouin, Haig, Inman, Irvine, Isnor, Kinley, Laird, Leonard, Macdonald (*Cape Breton*), MacKenzie, Macnaughton, McDonald Molson, Pearson, Rattenbury, Smith (*Queens-Shelburne*), Thorvaldson, Walker and White.—(29)

Present, but not of the Committee: The Honourable Senators Hastings and Methot.

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Upon motion, it was *Resolved* to recommend that 800 English and 300 French copies of this day's proceedings be printed.

Bill S-4, "Precious Metals Marking Act", was considered, clause-by-clause.

The following witnesses were heard:

Department of Consumer and Corporate Affairs:

The Honourable Ron Basford, Minister.

G. R. Lewis, Chief, Precious Metals Marking Division.

Upon motion, it was *Resolved* to report the said Bill without amendment.

At 10.15 a.m. the Committee proceeded to the next order of business.

10.15 a.m.

Bill S-10, "An Act to amend the Customs Act", was considered, clause-by-clause.

The following witnesses were heard:

Department of National Revenue:

J. G. Howell, Assistant Deputy Minister, Operations.

A. R. Hind, Assistant Deputy Minister, Customs.

Upon motion of the Honourable Senator Hastings, it was *Resolved* to amend clause 4, which amendment appears by reference to the Report of the Committee on the said Bill, which appears immediately following these Minutes.

Upon motion, it was *Resolved* to report the said Bill as amended.

At 10.45 a.m. the Committee proceeded to the next order of business.

10.45 a.m.

Bill S-6, "An Act respecting The Canada Trust Company" and Bill S-7, "An Act respecting The Huron and Erie Mortgage Corporation", were considered together.

The following witnesses were heard:

Department of Insurance:

R. Humphrys, Superintendent.

Caanda Trust Company and Huron and Erie Mortgage Corporation:

E. D. L. Miller, Assistant General Manager, Finance.

Upon motion, it was Resolved to report the said Bills without amendment.

At 10.50 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORTS OF THE COMMITTEE

WEDNESDAY, October 16th, 1968.

The Standing Committee on Banking and Commerce to which was referred the Bill S-4, intituled: "An Act respecting the marking of articles containing precious metals", has in obedience to the order of reference of October 9th, 1968, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

SALTER, A. HAYDEN,
Chairman.

WEDNESDAY, October 16th, 1968.

The Standing Committee on Banking and Commerce to which was referred the Bill S-10, intituled: "An Act to amend the Customs Act", has in obedience to the order of reference of October 9th, 1968, examined the said Bill and now reports the same with the following amendment:

Page 2: Strike out clause 4 and substitute therefor the following:

"4. Section 93 of the said Act is repealed and the following substituted therefor:

'93. The collector or other proper officer may cause any package of goods described in a bill of entry to be opened and the contents thereof to be examined for the purpose of making an appraisal or in order to verify the information given in such entry.'"

All which is respectfully submitted.

SALTER, A. HAYDEN,
Chairman.

WEDNESDAY, October 16th, 1968.

The Standing Committee on Banking and Commerce to which was referred Bill S-6, intituled: "An Act respecting The Canada Trust Company"; and Bill S-7, intituled: "An Act respecting The Huron and Erie Mortgage Corporation", has in obedience to the orders of reference of October 8th, 1968, examined the said Bills and now reports the same without amendment.

All which is respectfully submitted.

SALTER, A. HAYDEN,
Chairman.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Wednesday, October 16, 1968.

The Standing Committee on Banking and Commerce, to which was referred Bill S-4, respecting the marking of articles containing precious metals, met this day at 9.30 a.m. to give consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have four bills, to deal with this morning. The bill which we propose to take first is Bill S-4, respecting the marking of articles containing precious metals. Since the bill originated in the Senate, I suggest that we print the proceedings.

Upon motion, it was *Resolved* that a verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 copies in French be printed.

Honourable senators, we have with us this morning the Minister of Consumer and Corporate Affairs, the Honourable Ron Basford, and Mr. G. R. Lewis, Chief, Precious Metals Division.

Senator Benidickson, you gave the explanation in the Senate. Have you anything you wish to add?

Senator Benidickson: No, Mr. Chairman, except that I received great help from the departmental witness, Mr. Lewis. I feel that the Senate was complimented to have the new minister with us this morning to explain the bill and to answer questions respecting it. I understand that this is one of his first bills. I think he introduced another in the House of Commons but it has not been completed perhaps as expeditiously as I hope this one will be.

The Chairman: Mr. Minister, you have leeway in your explanations. Perhaps you have some general statement you may wish to

make and then we could get down to the details of the bill.

Hon. Ron Basford, Minister of Consumer and Corporate Affairs: Thank you very much, Mr. Chairman. Honourable senators, as Senator Benidickson has explained, this is the first bill that I have introduced, and I am honoured that it started in the Senate. I am pleased to have the opportunity to appear before honourable senators this morning.

I am accompanied by Mr. G. R. Lewis, Chief of the Precious Metals Marking Division of the Department. The purposes of the legislation were well outlined in the speeches on second reading by Senator Benidickson and Senator Thorvaldson. I have read those speeches and there is not very much I can add to the excellent presentation they made. I have Mr. Lewis with me this morning in case there are some questions from honourable senators.

This bill deals with the products of an important segment of the business community in Canada. The history of legislation governing the marking of precious metals articles in Canada goes back to 1908, when the Gold and Silver Marking Act was enacted. Since that time, the trade through the Canadian Jewelers' Association has co-operated with the federal Government in the enforcement of the legislation to bring order to the market place in the quality marking and advertising descriptions used in association with articles containing precious metals.

In this industry there are continual advances of a technological nature in manufacturing techniques and production methods, and corresponding improvements in quality control of materials and processes. These have become more numerous in recent years and it has become difficult for legislation in its present form to keep abreast of them.

With the increasingly heavy legislative programs in recent years, it has been most difficult to obtain an opportunity to lay this type of legislation before Parliament.

I think that the Canadian Jewellers' Association first asked for this legislation in 1959.

The intent of the bill is to update the Precious Metals Marketing Act, Chapter 215 of the Revised Statutes of Canada 1952 and to provide the mechanics for more easily meeting technological change. The present act governs the markings and advertising descriptions of articles composed of gold, silver, platinum and palladium and articles plated with gold or silver. The act embraces numerous operative sections of a technical nature, defining material content for various classes of articles. Since almost all required amendments to this act relate to manufacturing techniques, it is considered advisable that the act be reconstructed to retain the present basic provisions and place the operative technical sections in regulations made under the authority of the act. Such basic provisions to be retained in the act relate to general requirements respecting correct quality marking and identifying trade marks; offences, penalties, inspection procedure, and authority for the Governor in Council to make regulations. The authority being sought in this bill is to transfer to regulation all technical provisions of the present act, which include definitions of material content, assay tolerances, permissible quality marks and exemption of certain functional parts of articles from assay. This structure will provide the required flexibility to keep operative provisions up to date and provide consumers with meaningful descriptions and protection.

Honourable senators, as I have said, if there are questions, either Mr. Lewis or I will be happy to answer them.

Senator Pearson: Have there been any changes in the markings of precious metals?

Hon. Mr. Basford: With the addition of the two new metals, platinum and palladium, we thought it would be wise to have one mark for all four precious metals. Therefore, the marking will be as provided in the act. It will be a maple leaf surrounded by a "C", with an insignia indicating the type of metal it is.

The Chairman: Are there any other general questions?

Senator Thorvaldson: Mr. Chairman, the whole act has been re-enacted instead of the

old one being amended. Ordinarily the old acts are amended throughout the years. Is there any special reason for a whole re-enactment at the present time. Perhaps Mr. Lewis could give the answer to that.

Hon. Mr. Basford: Subject to what Mr. Lewis says, really the reason is that the amendments are rather extensive and it is simply easier to rewrite the whole act.

Senator Thorvaldson: It is just because of the extensiveness of the amendments. The principles remain the same. That is what I was getting at.

Hon. Mr. Basford: Yes.

The Chairman: I think for purposes of reference later, where you have substantial amendments it is better to do a new bill.

Senator Benidickson: I believe I said in the Senate chamber that in essence we are allowing more powers to be operated by regulation than by statute under this bill.

The Chairman: Yes, except that it would appear in the bill, senator, that the regulations are really part of the administration and not anything substantive in nature, which is the true purpose of the regulation. I do not know whether you wanted the minister to say that. I sort of cut in there, but I take it you agree with that statement, Mr. Minister.

Hon. Mr. Basford: Yes. If one looks at the old act, one sees a good many legislative requirements which appear on manufacturing processes, and it is very difficult in a changing industry to have these in legislative form, if legislation is to keep up to date with the industry and serve industry as this act is designed to do.

The Chairman: Are there any other general questions? If not, we can deal with this bill section by section. So far as section 2 is concerned, the interpretation section, are there any material differences there, Mr. Lewis, in the definitions?

Mr. Lewis: Not of a material nature. Paragraph (b) is identical except for the last part of the sentence, "other than an article or a part thereof designated by the regulations". This is removed from the definition of the word "article". It is a new definition.

Another change relates to the use of the words "precious metals". There is one definition of precious metals rather than four

individual definitions. These are the substances of the changes in section 2.

The Chairman: Are there any questions on the definitions?

Senator Carter: I notice that a large part of the act is taken up with the duties and the responsibilities of an inspector, "inspector" being defined in paragraph (d):

"inspector" means an inspector appointed or designated in accordance with section 6;

But when you come to section 6 it says:

6. The Minister may appoint or designate any person as an inspector for the purposes of this Act.

It does not give very much information about what kind of person should be an inspector or what his qualifications should be. I might say that that seems to be a standard procedure, because there are a number of acts that have the same feature; they give a definition like this one in (d) and then they tell you to go to another section, such as section 6 here, and you find that the person, the inspector in this case, is appointed or designated by the minister. There have been some complaints about that. I was just wondering why this is so. Is this just an administrative device? Could we not give more details about what kind of person should be made an inspector? This is apparently a very important job.

Hon. Mr. Basford: I will let Mr. Lewis describe the kind of people who are already acting as inspectors, but I think it would be rather unwise to write into legislation the Public Service requirements for an inspector. However, the duties, responsibilities and rights of inspectors are set out in the act.

Senator Carter: Yes?

Hon. Mr. Basford: And so are the areas that he can look at and the powers that he has. They are carefully set out.

Senator Carter: Under the present act these could be ignored, really. If a person were foolish enough to do so, he could ignore what is set out. There is nothing to compel an inspector to be able to discharge that function—

The Chairman: You mean to be able to read? Does not the Public Service Act have some bearing on this?

Hon. Mr. Basford: I think the inspectors are required to follow the act under which they are operating and being paid as inspectors.

The Chairman: I am thinking more of the appointment.

Mr. Lewis: The duties are clearly outlined for inspectors. The experience requirements of handling jewelry articles preferably at the manufacturing level are not less than four years in one grade of inspector, and not less than six years in another grade. So they are familiar with the metals with which they are working. This is clearly defined in the Public Service Commission statement of duties for this position.

Senator Benidickson: Mr. Chairman, my colleague Senator Everett asked me, because I sponsored the bill in the Senate, under what area and section of the B.N.A. Act the federal Government has jurisdiction in this field. I confessed to him that offhand I could not say, but I did say that we have had legislation of this kind since 1908. Could our legal counsel throw some light on this?

Hon. Mr. Basford: Our position is that it is founded on the criminal jurisdiction of the federal Government, an act to prevent deception and fraud in the sale of precious metals.

Senator Benidickson: Thank you.

Senator Thorvaldson: Coming back to section 6, Mr. Chairman, which says that "the Minister may appoint or designate any person as an inspector for the purposes of this Act", does that mean that this person is outside the Public Service or that the minister may appoint anybody from Canada as an inspector without that person's being a member of the Public Service?

Hon. Mr. Basford: No, senator. Inspectors are members of the Public Service and are hired in the normal way. It does not require direction from the minister to actually appoint inspectors for purposes of this act, to give them powers of entry and inspection and powers to seize, et cetera. But they are not ministerial appointments. They are Public Service appointments.

Senator Thorvaldson: That is what I wanted. They are designated by you out of the Public Service.

Hon. Mr. Basford: That is right.

The Chairman: The Public Service, I suspect after consultation with the department, senator, would set up the specifications for the job and then in the appointment qualifications the people applying would have to conform to Public Service requirements.

Senator Thorvaldson: How many inspectors are there in Canada and are they appointed exclusively for purposes of administering this act?

Mr. Lewis: There are six inspectors across the country. Three are located in Montreal, two are located in Toronto and one is in Vancouver. Their work is not entirely devoted to this act. They also enforce similar regulations relating to material contents of other products as well.

Senator Thorvaldson: That answers my question.

The Chairman: Does section 2 carry?

Hon. Senators: Carried.

The Chairman: Are there any questions on section 3? This is just the prohibition requirement.

Senator Pearson: Does the dealer reporting precious articles have to inspect each one as it comes in or does he make an initial inspection and then report?

Mr. Lewis: There is nothing laid down except that it is an offence to import anything illegally marked. We endeavour as much as humanly possible to inspect daily the major ports of entry in order that, if there is something in contravention of the act, the importer can be so advised before he completes the importation.

Senator Pearson: What happens if an article is imported that is legally marked in the country from which it comes but falls below the standards required by this act? What happens then?

Mr. Lewis: Then the marking would have to be corrected to meet the specifications.

Senator Pearson: It would have to be labelled according to Canadian standards.

Mr. Lewis: It would have to meet the specifications of material content established for Canada. If the quality of the silver were below 925/1,000 pure silver, then it could not be sold in Canada. If it was 800, a figure used in European countries, and the word "silver"

on it, this would have to be removed because 800 quality is not recognized as silver in Canada.

Senator Carter: That is when it is brought in for resale, but a person could bring—

Mr. Lewis: It only applies to dealers.

Hon. Mr. Basford: I think we should point out to Senator Carter subsection 4 of section 4 which recognizes the United Kingdom hallmark.

Mr. Lewis: Yes.

Senator MacNaughton: Mr. Chairman, how is it possible to inspect the major ports of entry, with only six inspectors daily?

Mr. Lewis: It is difficult, but most of the importation is done by the larger wholesale firms and they are located mainly in Montreal and Toronto where the inspections are concentrated. There are very few importations of any magnitude through other ports.

Senator Benidickson: Perhaps not in magnitude, Mr. Lewis, but sometimes my wife, when we are out driving in the automobile, asks me to stop when she sees an antique sign. I find that some of these people are direct importers. To what extent are markings and things like that checked?

Mr. Lewis: We receive co-operation from the customs officials in drawing our attention to any commercial importation points that we may not be inspecting regularly. We then get the information or details as to the type of marking on the article on which we can base a decision for the customs appraisers. It should be refused and held until we take the matter up directly with the importer.

The Chairman: Do you mean to say that the customs officials will hold for your approval what appears to be commercial importation?

Mr. Lewis: If the importation is obviously a violation, such as the mark 10 carat, and if it lacks the required registered trademark, the article is then considered incorrectly marked and may be held at that point of entry until we have discussed the violation with the importer.

Senator Benidickson: Does this come back to the jurisdiction under the criminal section of the B.N.A. Act?

Mr. Lewis: Yes. Marking is not mandatory; it is voluntary. If the article is marked, then it must adhere to the requirements as laid down in the act, but, as I say, it is not a mandatory marking bill.

Senator Thorvaldson: What do you mean by, it is not a mandatory marking bill? In other words, do you mean than an antique dealer can import metals from any country whether or not those metals are marked by that country and sell them without any markings on them? Is that what you mean?

Mr. Lewis: When I say that the markings are not mandatory, I mean that articles may be sold in Canada without any claim of quality being stamped on them, regardless of whether they are imports, domestic production or antiques. In other words, there is no compulsion that the articles be marked in the first place. If an article is marked, then it must be marked in accordance with the requirements set down in various sections.

Senator Thorvaldson: If it is marked in the country of origin—

Mr. Lewis: If it is marked in the country of origin, then the marking must be in accordance with the requirements.

Senator Thorvaldson: Is that what you mean?

The Chairman: If it is marked in the country of origin but does not comply with Canadian standards then it cannot be brought in and disposed of in Canada without the marking being changed to conform.

Senator Thorvaldson: But, at the same time, there is no prohibition against bringing in unmarked articles.

Mr. Lewis: Yes.

The Chairman: Is Section 3 carried?

Hon. Senators: Carried.

Senator Benidickson: Can we follow that up, taking the mark of 18 carat gold? Is there pretty well an international standard which applies throughout all countries in the world whereby that marking is accepted, or are there some countries where a certain carat of gold marking standard is not satisfactory to Canada?

Mr. Lewis: The marking itself "18 carat" means the same thing throughout the world. It is equivalent to the marking in the form of

decimals. Take the example of 18 carat in Europe which may be stamped .750. The 18 carat means 18/24ths of pure gold or three quarters, and the .750 is three quarters. This is a universal type of marking, but it would probably arise if there were more liberal tolerances in the assay of articles, but the marking itself would be universal.

Senator Benidickson: Am I correct, Mr. Chairman and Mr. Lewis, as to my conception of this act that I presented to the Senate, that everything is voluntary on the part of those who present articles of precious metals, but that if they do present them they then must subscribe to your rules and regulations, but that somebody could present an article of any of these four precious metals without marking "let the buyer be aware"? Is that what you mean?

Hon. Mr. Basford: Yes, that is right, senator, and if he marks it in any way then it must be marked in accordance with this act. The practice is for Canadian jewellers to look for the mark, so there is a strong economic incentive for people to mark and, consequently, to mark in accordance with this act.

Senator Benidickson: They mark in accordance with the act, then the customer has some assurance of the liability.

Hon. Mr. Basford: That is right.

Senator Everett: If it has a foreign marking on it, it must then be marked with a Canadian mark in order to be retailed in Canada.

Mr. Lewis: No. If it is a British hallmark or a mark of another country which is in accordance with subsection 4, this truly and correctly indicates the quality of the precious metal.

Senator Everett: Do we accept other countries' markings in that case?

The Chairman: Only if they conform to our marking as to quality.

Senator Everett: If they are below our standards, does that mark have to be expunged?

Mr. Lewis: If it happened that it was below our standards that would be true, but I think all countries, if my memory serves me correctly, do conform in the matter of tolerances, which is where the problem would arise. However, lower quality than what we have in Canada is not recognized in any country, so this problem has not arisen. When we

say we recognize the mark of a foreign country, this is where the mark is applied by the government, not by the individual manufacturer in the foreign country. The articles are actually assayed and tested by the government departments and the mark is applied by them.

The Chairman: We come to that in section 4, which deals with quality, and the question we have been discussing with regard to the application of those trademarks of other countries which may appear on precious metals and still conform with our standards. Are there any further questions on section 4? Is the section carried?

Hon. Senators: Carried.

The Chairman: Are there any questions on section 5? It seems pretty straight forward. Is this section carried?

Hon. Senators: Carried.

The Chairman: On section 6, we already dealt with that at the beginning, Senator Carter, so I take it we can carry that one.

Hon. Senators: Carried.

The Chairman: Then we come to section 7. Sections 7 and 8 refer to the duties and authority of the inspectors in carrying out their job. Are there any questions on those sections?

Senator Kinley: Are there any inspectors now?

The Chairman: There are six.

Senator Kinley: Do they anticipate having more inspectors?

Mr. Lewis: Not at this time, senator.

Senator Kinley: Section 6 says:

The Minister may appoint or designate any person as an inspector for the purposes of this act.

Is not that in the act now?

The Chairman: This is a new act, not an amending bill.

Senator Kinley: Were there inspectors under the old act?

The Chairman: This will repeal the old act.

Section 8 defines the duties and so on. Shall these sections carry?

Hon. Senators: Carried.

The Chairman: We come now to section 9 dealing with the regulations. Are there any questions on that? It deals with a recital of the items in respect of which regulations can be enacted and to that extent it is of an administrative character. Shall it carry?

Hon. Senators: Carried.

The Chairman: Section 10 deals with offences and punishment. Any questions?

Senator Carter: Are there any differences here from the old act? Are there any new requirements?

Hon. Mr. Basford: The penalty under section 2 used to be \$25 minimum and \$100 maximum. This is changed, as you will see, in the last few words of section 10 to a fine not exceeding \$500.

Senator Benidickson: On this point, we had a discussion about a new format for presentation of bills. We have the French and English in two columns on the left. If there was a change in a bill, say an increase in penalty with regard to an offence, didn't we formerly have on the right hand side of the bill an explanation of the old and new form. What has happened to change this?

The Chairman: We had it on all amending bills. But this is a new bill.

Senator Walker: Mr. Chairman, under section 10 I see a penalty not exceeding \$500. Supposing they found 10 articles at a time, does that mean \$500 applying to each article if the magistrate so wished?

Hon. Mr. Basford: It would apply to each offence.

Senator Walker: So that if there were 10 articles involved it could be \$5,000?

The Chairman: Up to \$5,000.

Senator Thorvaldson: Conversely there might be a case where an importer imports, say, a million dollars worth of a certain article which would involve only one offence, and his fine, if found guilty, would be only \$500.

Mr. Lewis: I believe each article would be regarded as a separate offence. This is the intent of the legislation, and by removing the minimum fine, if there were a dozen articles involved, you may get a conviction on the dozen offences. Depending upon the circumstances, the court could then impose the fine on one or two and suspend sentence on the

balance, but the conviction would automatically cause forfeiture of the articles.

Senator Thorvaldson: The magistrate then would have quite a problem on his hands as to penalty if there were a thousand or ten thousand articles involved.

Senator Kinley: Is there any international commitment involved with regard to the liability of importers for precious metals such as silver, gold and platinum coming into this country? If I buy a silver set in England and it is marked sterling and the inspector comes and finds that it isn't, who is responsible?

The Chairman: But you are not a dealer, and this act only applies to dealers. So far as you are concerned the ordinary standard would prevail—let the buyer beware.

Senator Kinley: But what do you do in the case of the sale of an estate of a person who has a lot of this?

The Chairman: Well, now you are raising a different question and we may not have all the answers here. If the estate employed a dealer to dispose of these articles, some question might arise.

Senator Kinley: But he would be the person responsible.

The Chairman: If he gets an agent to sell it he is not liable, but if he sells it himself he is. Shall this section carry?

Hon. Senators: Carried.

The Chairman: I should point out that in that section there is a time limit on instituting prosecutions in the last subparagraph. The time limit is a year from the date on which the subject matter of the complaint arose.

Section 11 deals with the disposition of articles upon conviction. Any questions?

Senator Gouin: What is meant by the reference to the Fisheries Act in subsection 3?

Hon. Mr. Basford: Section 64A of the Fisheries Act, and this is the explanation I have from the Department of Justice, carefully spells out the rights where the Crown has seized something that has been forfeited of a person other than the person who is responsible for the offence, and who has an interest in the forfeited article, but who is not, as I say, involved in the violation of the statute. The result is that there is a reference to the Fisheries Act so that these rights of the non-offending person are carefully spelled out,

and the department has brought them now into this act. What is needed is a Crown Forfeiture Act which would spell out these rights applicable to all Crown Forfeitures.

Senator Desruisseaux: So that if the Fisheries Act were amended, we would have to amend this act too?

The Chairman: No, we would be subject to it in whatever form it was, and if the section still remained the same and retained the same designation, 64A, then we would be subject to it in that designation. If they repealed that and enacted another with the same number, then of course you would have a question as to the rights of non-offending parties.

Hon. Mr. Basford: I understand the Department of Justice keeps a careful track in cases where sections of one act impinge upon those of another.

Senator Macnaughton: The same situation would apply to the Trade Marks Act which I understand the minister proposes to amend at a later stage. Any changes in the Trade Marks Act would automatically be involved here too. There is a section here that refers to the subject of the Trade Marks Act, as amended in the future.

Hon. Mr. Basford: The trade mark must be registered under the Trade Marks Act. If we were completely to repeal the Trade Marks Act, which is a rather unlikely possibility, then, of course, there would be no requirement for registration. As long as there is a Trade Marks Act, which I would suspect would be for some time to come, the mark under this act would have to be registered under the Trade Marks Act.

The Chairman: Carried?

Hon. Senators: Carried.

The Chairman: Section 12 deals with the "Certificate of 'Master or assayer.'" This is again in the usual form, I take it?

Hon. Mr. Basford: Yes. There is no change from the previous act.

The Chairman: Carried?

Hon. Senators: Carried.

The Chairman: Section 13 provides the transitional, repeal and coming into force provisions. This is where you have a repeal of

the present act, Senator Kinley, provided for. Shall this carry?

Hon. Senators: Carried.

The Chairman: And then section 14, the date of coming into force. Carried?

Hon. Senators: Carried.

The Chairman: Shall the title carry?

Hon. Senators: Carried.

The Chairman: Shall I report the bill without amendment?

Carried.

The Chairman: Thank you, Mr. Minister.

Hon. Mr. Basford: Thank you very much, Mr. Chairman and honourable senators.

Whereupon the committee concluded its consideration of the bill and proceeded to the next order of business.

Ottawa, Wednesday, October 16, 1968

The Standing Committee on Banking and Commerce, to which was referred Bill S-10, an Act to amend the Customs Act, gave consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

Upon motion, it was *resolved* that a verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 copies in French be printed.

We have before us for consideration *now* Bill S-10, an act to amend the Customs Act.

The witnesses are: Mr. A. R. Hind, Assistant Deputy Minister, Customs Mr. J. G. Howell, Assistant Deputy Minister, Operations; Mr. Andre Senecal, Director, Port Administration; and Mr. Robert Fraser, Customs Appraiser.

Senator Hastings, you gave an explanation of this bill in the Senate. Is there anything you would like to add?

Senator Hastings: No, Mr. Chairman, I have nothing to add, except to state that the purpose of the bill is to up-date and improve the procedures of the Customs, and to give legislative authority, as recommended by the

Public Accounts Committee in the other place and as concurred in by the Auditor General.

I do have an amendment to propose, as we proceed.

The Chairman: Are you going to carry the ball on this, Mr. Howell?

Mr. J. G. Howell, Assistant Deputy Minister, Operations, Department of National Revenue: I will, Mr. Chairman.

The Chairman: If there is a general statement that you would like to make first, this is the time for it.

Mr. Howell: Mr. Chairman, I have no general statement prepared, but I may say that the amendments contained in this bill, S-10, were largely brought about by procedures which the department adopted to enhance its operations and which, ultimately, the Auditor General felt should be covered by legislation.

Practically all the matters were discussed in the Public Accounts Committee of the Commons, where it was recommended that the practice be followed which we were following, but that our act be amended and brought up-to-date. This is the reason for this particular bill, S-10, at the present time.

Shall I deal with the sections, Mr. Chairman?

The Chairman: Yes, we will start with section 1, if you will give an explanation. Then you can introduce your amendment at the appropriate time, Senator Hastings.

Mr. Howell: In section 1 we have left out the last paragraph of section 23(2), where we were required to destroy goods which could not be sold for duties and taxes and other purposes. It was always the feeling of the department that this was a waste of good property and that we should, if we could, sell the goods by public auction to get the duty and taxes out of it. This was fully agreed to, and the bill has been amended to provide that we do not have to destroy and we can sell by public auction or public tender.

The Chairman: Still dealing with section 1, is this the section concerning which you have an amendment, Senator Hastings?

Senator Hastings: I would like to know why we say in section 1 "duly entered within one month". This is the only place in the act where the term is measured in months rather than days. All the others are days—thirty,

sixty, ninety days; and in this particular clause you say "one month".

Mr. Howell: I am not quite sure I know the explanation, but I think it is on the basis that we are talking about warehouses, and the warehouse rent is usually based on one month and not a number of days. I think this is probably the reason it is used there.

Senator Hastings: If we are going to be consistent, should we not say "thirty days"?

Mr. Howell: It has always read like this, but we can change it. We spoke to our lawyers about this point and they said, "It has always been one month." If goods go into warehouse on the 28th of the month, they are there until the next 28th. If you put them in on the 5th, they are there until the 5th of the next month.

Senator Hastings: But the length of the months varies—28, 30, 31 days. When you refer to days 17 times in other places in the act, it would be consistent to refer to "30 days" in this clause.

The Chairman: The difference is that in the subsection you are referring to you are talking about "not duly entered within one month"—that is, into warehouse.

In section 2 they talk about "within thirty days," but this is not in relation to the entering into warehouse. It is the time limit you have after entry or landing of any goods. It applies to different circumstances, so consistency would not necessarily be a virtue there.

Senator Thorvaldson: Supposing the goods come into warehouse on February 28 and they are there for one month, until March 28; but if you come in on March 1, it is a 31-day month.

Mr. Howell: Yes.

Senator Kinley: It seems to me the only difference is the destruction of goods. The amendment does not provide for destruction of goods. The law used to be that they would be destroyed. What action do you take now when you make the sale yourself?

Mr. Howell: We sell the goods.

Senator Kinley: But do you give the importer anything that is left?

Mr. Howell: Yes.

Senator Kinley: Otherwise, under the old act, you destroyed the goods.

Mr. Howell: Yes, the law said to destroy the goods, but we actually did not; we sold them for duties and taxes.

Senator Carter: What do you do with beer now, do you sell it or does it still go down the drain?

Mr. Howell: No, we cannot sell alcoholic beverages.

Senator Thorvaldson: I think that is a terrible waste.

Mr. Howell: Under the Importation of Alcoholic Liquors Act, passed in 1928 after a long series of very unfortunate circumstances along the Canadian-American border, this act stated that none but liquor commissions may import liquor into Canada, either from outside of Canada or inside Canada.

Senator Thorvaldson: I think we should get sensible and do some revising of those provisions.

The Chairman: The only difficulty you have is that you have one purchasing authority in each province that is very anxious that as much revenue as possible should be produced from that purchaser. To make assurance doubly sure, they have no competing purchaser.

Senator Thorvaldson: But the fact is that these circumstances create very big waste, economic waste, which as sensible people we should not tolerate in this country any more—whether it concerns alcoholic beverages or any other kind of confiscation of goods seized under any act whatsoever.

The Chairman: If, instead of destroying them you distributed them to, say, some of the welfare agencies, you can imagine the howl that would be raised—not necessarily by the residents, but by those charged with the administration of welfare.

Mr. Howell: The liquor boards cannot very well buy this liquor from us because this may be a brand they have never purchased and do not carry; it might be of a different strength, different stock, different flavour, and consequently, they do not put it on their shelves.

Senator Macnaughton: May I point out that we have the jurisdiction on the Hill to open up a depository.

The Chairman: That is not covered by the bill before us. Are there any other questions on section 1 of the bill? Does section 1 carry?

Hon. Senators: Carried.

The Chairman: Have you any comment on section 2 of the bill, Mr. Howell?

Mr. Howell: I think this is the same as the other one.

The Chairman: Yes. Does section 2 carry?

Hon. Senators: Carried.

The Chairman: Are there any questions on section 3? This is simply giving the importer an opportunity to get out of trouble, is it not?

Mr. Howell: This is just the same as the other one except that it applies to goods in the warehouse, and not goods imported.

Senator Thorvaldson: Mr. Chairman, I should like to go back to section 2, if I may. I observe that the period is 30 days there.

The Chairman: Yes, I pointed that out a while ago. The period of a month is in relation to entry into warehouse, and it is a well understood period in respect of the occupation of premises. Thirty days is simply a time limit within which certain things may happen. I do not think there is any relationship, or need be any relationship, in the language.

Senator Kinley: Is there any chance here of the importers not having to go through all this business?

Mr. Howell: He may bid at public auction, or by public tender.

Senator Kinley: For instance, after you advertise a sale and go through all this paraphernalia that you have here, can you say to him, "Look, these goods are here. What will you give them?"

The Chairman: No.

Mr. Howell: He had his opportunity when he imported of paying the duties and taxes.

Senator Kinley: It says:

The purpose of this amendment is to remove the obligation to destroy goods abandoned in accordance with this section that cannot be sold for a sum sufficient to pay duties and charges thereon. The amendment set out in clause 10 is related to this amendment.

I thought that that meant he could come in and buy the goods.

The Chairman: Only at public auction. He competes with everybody else.

Senator Kinley: Suppose nobody else bids.

The Chairman: Well, he can bid. Does section 3 carry?

Hon. Senators: Carried.

The Chairman: Section 4?

Senator Hastings: Section 4 was inserted to provide more flexibility in inspection at customs. However, it is the opinion of the legal counsel that we have tied our hands by using the phrase "in the presence of the importer thereof or his agent", because this would make it inoperative at the moment. I propose, therefore, that this clause be amended by striking out the words "in the presence of the importer thereof or his agent".

The Chairman: What is the effect of that?

Senator Hastings: Would you care to answer that question, Mr. Howell?

The Chairman: In practice, how do you do it?

Mr. Howell: In practice we do not require the presence of the importer or his agent to open goods.

The Chairman: What procedures for the protection of your own people do you employ in connection with the opening of goods if the owner or importer is not there?

Mr. Howell: We do not say that by law a person should be there. What we say is that we would prefer him to be there. He is usually there, but usually goods are opened in a warehouse or a postal branch where there is a large number of employees, and more than one person opening a package, and there is another appraising the contents. Therefore, you do have more than one person present.

The Chairman: Would it slow down the process if instead of "in the presence of" we said "on notice to"?

Mr. Howell: The importer has to have notice of goods arriving in order to be able to present his entry. That is when the entry is presented.

The Chairman: And this refers to opening for the purpose of examination?

Mr. Howell: Yes.

The Chairman: Yes, I see.

Mr. Howell: You will notice that we struck it out old section 93 because it had relation only to the entry of goods where there was a suspicion of fraud. Actually, I do not think we have ever had a case of fraud here, and even if we did suspect fraud we would be obliged for our own protection to call the importer in. I do not think it is necessary to have those words in here. We did not notice the problem until a few days ago, but this would force us to require the importer to be present every time we opened a package, and this would stop our operations.

The Chairman: What is the view of the committee? Is the committee prepared to amend this section by striking out those words?

Senator Thorvaldson: I think Mr. Howell can speak to that better than any other person here. He probably was speaking to it, but I did not hear what he said. However, it seems to me that you create for yourselves a great administrative problem by putting in those words. What happens if the importer says he will not go? Probably you were referring to that.

Mr. Howell: Yes, I was referring to that, because the release of goods would come to a standstill if we had to wait for the arrival of the importer or his agent.

Senator Thorvaldson: He may never come.

Mr. Howell: That is right, he may never come.

Senator Carter: Is this a new section What did you do previously?

Mr. Howell: Look at section 95(1) on the right hand page. It is one package in ten, do you see?

Senator Carter: So you had the right to open in ten in ten, whether he was present or not?

Mr. Howell: That is right.

Senator Carter: How did this provision with respect to having a person present arise?

Mr. Howell: Are you referring to the words "in the presence of", and so on?

Senator Carter: Yes.

Mr. Howell: Actually they came out of section 93.

Senator Carter: I see.

Mr. Howell: There was a little mixup there.

The Chairman: Shall the amendment carry?

Hon. Senators: Carried.

The Chairman: So, we will amend the new section 93 by striking out the words "in the presence of the importer thereof or his agent".

Senator Thorvaldson: I take it that the department wants that?

The Chairman: The department supports the amendment.

Section 5: This is simply the repeal of sections 95 to 97 of the act. These were specific provisions in connection with examinations, and they are no longer necessary. Is that correct, Mr. Howell?

Mr. Howell: These sections had reference to an examining warehouse. We no longer send goods to a central warehouse, because we examine goods on the spot in the warehouse at which they arrive in Canada, whether they arrive by steamship, railway, highway, or air. We do not bring goods into a central point.

The Chairman: Section 6, at the top of page 3, deals with refund for alleged inferiority or deficiency. This has to do with sales tax, does it not?

Mr. Howell: No, sir.

The Chairman: Has this also to do with customs entry?

Mr. Howell: Yes.

The Chairman: If you are looking for uniformity, Senator Hastings, I would point out that you have a period of ninety days here.

Senator Hastings: But it is still stated in days.

Mr. Howell: I will call on Mr. Hind, the Assistant Deputy Minister, Customs, because this is in his area.

Mr. A. R. Hind (Assistant Deputy Minister, Customs, Department of National Revenue): Mr. Chairman, this has the effect of extending to 90 days, from the existing 30 days, the period of time in which an importer can report to the collector any shortage of goods or any deficiency in quality of the goods. Heretofore it has been 30 days, although I should say that there is in existence now an order in council which increases the period

from 30 days to 90 days. However, it was felt that rather than having to lean on an order in council for this authority we should have it in the act.

The Chairman: This is a relieving provision, and is of benefit to the importer?

Mr. Hind: Yes.

The Chairman: And it is consistent with your practice?

Mr. Hind: Yes.

The Chairman: Does section 6 carry?

Hon. Senators: Carried.

Senator Isnor: It covers quantity as well as quality?

Mr. Hind: Yes, sir.

The Chairman: Have you any comment on section 7, Mr. Howell?

Mr. Howell: This again comes under Customs.

The Chairman: Mr. Hind?

Mr. Hind: This is a new section which will give the department authority to continue to act as it has been acting for many, many years in the past. In the Customs Tariff rates of duty can vary depending upon the person importing the goods, or the use to which the goods are put. As an example, a university or a hospital is permitted to bring in certain named goods at a lower rate of duty than the average individual would pay. Past practice has been that when an importer has imports goods for stock and does not know to whom the goods will be sold, he pays the rate of duty as required under the law. If subsequently he sells the goods for an exempt use or to an exempt individual, in the past we have entertained refund claims. In other words, we require the importer to pay only the rate of duty that would have been payable had the final purchaser been the importer of record. The Auditor General felt that we had been honouring these refund claims without proper authority. As a result we are now suggesting an amendment to the Customs Act which will give us authority to continue our past practice.

The Chairman: Shall section 7 carry?

Hon. Senators: Carried.

The Chairman: We pass to section 8.

Mr. Hind: This again is a change which has been made as a result of a comment by the Auditor General. It relates primarily to airlines. Traditionally vehicles have been exempted from the payment of duty and tax when they engage in international traffic. We have a problem, however, when dealing with airlines, some of which operate domestically in addition to operating internationally. When they operate domestically both duty and tax have to be paid.

Our problem is to determine the proper amount to refund in respect of the time the aircraft is operating internationally as opposed to domestically. In the past our practice has been to work on an estimated basis, based on a formula which very largely takes into account the number of miles flown by the aircraft internationally as opposed to the number of miles flown domestically. This new section is for the purpose of enabling us to continue to operate as we have in the past.

Senator Laird: I see this is subject to the consent of the party involved. Supposing that party does not consent, what happens?

Mr. Hind: I must say that we have not run into problems of this nature in the past. In establishing the formula we normally sit down with the airlines and have a meeting of the minds in establishing the formula approach.

Senator Laird: Supposing the airline does not consent, do you then arbitrarily apply your own formula? Have you power to do that?

Mr. Howell: Actually we would charge full duty and tax; you apply the tariff.

The Chairman: Shall section 8 carry?

Hon. Senators: Carried.

The Chairman: We now pass to section 9.

Mr. Hind: Section 9 represents a tidying up operation. It gives the importer 90 days in which to bring to the attention of the local collector any misdescription of goods on the invoice. At present the period is 30 days and it is felt that in today's way of doing business 30 days are not quite sufficient. It has been suggested that we make the period 90 days, which is in keeping with what we are doing in respect of the shortages of goods and the inferiority in quality, which we have examined in section 6. This again is by way of relief to the importer.

Senator Hastings: I have the brief of the Canadian Chamber of Commerce regarding a 90-day reappraisal period, saying that the importer is confined to 90 days while the minister has two years in which to reappraise.

Mr. Hind: That is in another section of the Customs Act.

Senator Hastings: This refers to section 43. Would you care to comment on that?

Mr. Hind: Section 43 does indeed give the importer 90 days in which to contest a ruling of the department, be it on value or on rate of duty. It is true that there are subsections in the same section which give a dominion customs appraiser two years in which to make a re-determination of the value or classification. There are a number of reasons why we feel we should not extend the period to the importer beyond 90 days.

If we are looking, for example, at a claim for inferiority in quality it is almost essential that this be brought to the attention of the customs authorities as soon as possible because physical examination of the goods is required, or if there is a shortage claimed customs officers must examine the importation to see if the shortage exists. We feel we can do this within a 90-day period, but if we leave it for two years it will make it almost impossible for us to determine whether there is an inferiority in quality of the goods or a shortage of quantity of goods imported.

Senator Hastings: I appreciate having 90 days with respect to shortage or quality, but on reappraisal you also confine them to 90 days while your minister has two years in which to reappraise.

Mr. Hind: As a matter of practice, the minister, the deputy minister and the dominion customs appraisers do not go back beyond the 90 days even though the two-year period is there. In addition, we lean upon this two-year period in order that the deputy minister may act in relief of an importer. In other words, while under section 43 the importer is restricted to 90 days in which to claim overpayment, if it is found that there was a ruling in existence which backs up the submission by the importer and the importer did not come to us within a 90-days period, the deputy minister can, will and does use the two-year period in which to pay the refund claim.

Senator Hastings: To reappraise?

Mr. Hind: Yes, sir.

Senator Isnor: You would have very, very few of these cases.

Mr. Hind: We have a fair number of such cases.

The Chairman: Shall section 9 carry?

Hon Senators: Carried.

The Chairman: We now come to section 10, which dealt with sales by public auction or tender. The only additional words appear to be "by public tender".

Senator Carter: I think Mr. Howell answered this question in reply to Senator Kinley earlier but I am not sure. Can the person who forfeited goods buy them back under tender?

Mr. Howell: If we were the highest bidder on a tender, yes.

Senator Carter: If he had forfeited them because they were illegal?

Mr. Howell: It would not necessarily be because they were illegal. He might have abandoned them in the warehouse, or he might not have been able to pay for the goods at the time and get them out of bond.

Senator Carter: This would not apply to goods forfeited because they were illegal?

Mr. Howell: Illegally imported because they were smuggled?

Senator Carter: Yes.

Mr. Howell: If they were smuggled they would be sold by auction, yes.

The Chairman: Shall section 10 carry?

Hon. Senators: Carried.

The Chairman: Section 11 is simply procedural. Are there any questions? Shall the section carry?

Hon. Senators: Carried.

The Chairman: Section 12. Have you any comment on that, Mr Hind?

Mr. Hind: This amendment is consequential on the amendments of some previous sections, under clauses 4 and 5 of the bill, where the words "examining warehouse" were eliminated. This amendment to section 216 is a consequence of that.

The Chairman: It is safeguarding the position.

Senator Kinley: Who has the lawful authority in regard to the practice in the Customs? It is the officer who makes the submissions to the department?

The Chairman: Under an earlier section which we were dealing with, the Customs officer opens the package, when he is given the right to examine.

Senator Kinley: On the question of the lawful authority, it says "any person who, without lawful authority". The person who has lawful authority is the customs officer?

The Chairman: Yes. Shall the clause carry?

Hon. Senators: Agreed.

The Chairman: Shall I report the bill as amended?

Hon. Senators: Agreed.

Whereupon the committee concluded its consideration of the bill, and proceeded to the next order of business.

Ottawa, Wednesday, October 16, 1968

The Standing Committee on Banking and Commerce, to which was referred Bill S-6, respecting the Canada Trust Company and Bill S-7, respecting the Huron and Erie Mortgage Corporation, gave consideration to the bills.

Senator Salter A. Hayden (Chairman) in the Chair.

The Chairman: Honourable senators, since these bills originate in the Senate, we should report the proceedings.

Upon motion, it was *resolved* that a verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 copies in French be printed.

The Chairman: Honourable senators, since these two companies are related, I suggest that in our consideration of them, in the verbatim reporting, and in our Report to the Senate, we deal with the two bills together. Is that agreed?

Hon. Senators: Agreed.

The Chairman: We have with us this morning Mr. R. Humphrys, Superintendent of Insurance. Mr. Humphrys, in accordance with the usual practice, would you give us an explanation as to what these bills propose?

Mr. R. Humphrys, Superintendent of Insurance: Mr. Chairman and honourable senators, these two bills are, in a sense, companion bills. The Canada Trust Company is very well known, one of our major trust companies; and The Huron and Erie Mortgage Corporation is a very large mortgage loan company.

The two companies are associated with the Canada Trust Company as a wholly-owned subsidiary of the Huron and Erie Mortgage Corporation. The two companies operate together and have the same operating staff and share the same offices. The boards of directors are not identical but there is considerable overlapping.

The purpose of these bills is merely to increase the authorized capital stock of each company. The department has no objection to that. In fact, it is necessary, as a company grows in size, to increase the capital, in order to maintain an adequate safety margin for the deposits.

The Chairman: That is, as between deposits and capital?

Mr. Humphrys: This company has grown to the size where it needs to increase its capital in order to provide this safety margin for expected future growth. That is the purpose of this proposed amendment, and there are scarcely any further comments I can make at the moment.

Senator Kinley: Could Mr. Humphrys say whether any banks have control of the shares of the Canada Trust Company or of the Huron and Erie Mortgage Corporation?

Mr. Humphrys: No, all the shares of the Trust Company are owned by the Huron and Erie Mortgage Corporation.

Senator Kinley: Sometimes trust companies split things up to bring themselves within the law with regard to bank ownership. That is not apparent here?

Mr. Humphrys: No, there are no shares of the Canada Trust Company in any hands except those in the parent company, the Huron and Erie Mortgage Corporation, and the qualifying shares owned by directors.

Senator Kinley: The Canada Trust Company has had its name for a long time?

Mr. Humphrys: Yes, since the turn of the century, since 1901.

Senator Kinley: In terms of events, regarding trust funds now, the names are rather similar between one and another?

Mr. Humphrys: Indeed, there might be an argument today, if they were seeking those names.

Senator Macnaughton: In essence, the company is doing so well it needs more capital?

The Chairman: It is that simple, yes. There is a relationship between deposits and the paid-up capital.

Senator Macnaughton: I understand that these companies are independent of any bank control?

Mr. Humphrys: Yes.

Senator Kinley: In the case of the Mortgage Company, is it attached to the banks at all?

Mr. Humphrys: No. The control of the Mortgage Company does not rest in any single shareholder. Some banks may have shares in a mortgage company.

Senator Leonard: Is it contemplated that the situation will still continue with respect to additional shares, that they will be held by the Huron and Erie Mortgage Corporation for the Canada Trust Company?

Mr. Humphrys: That is my understanding.

Senator Leonard: The borrowing power, under the general terms of the act, is only

affected through the increase in capital of the Huron and Erie Mortgage Corporation?

Mr. Humphrys: That is so. The law requires that the two companies be consolidated for testing of borrowing power.

Senator Isnor: I am wondering regarding the number of shares and the amount. They state \$20 per share. Am I wrong in that, that later on they will come back and ask for another re-appraisal, to \$10 a share, to make it more uniform with the market?

Mr. Humphrys: This bill will establish the par value of the shares at \$2 each, so this will subdivide the shares as compared with the present par value.

Senator Haig: What is the market value of the shares at the present time?

Mr. Humphrys: The market value of the Huron and Erie shares is around the \$14 level. It has been between \$14 and \$15.

Senator Carter: Do these two companies operate independently?

Mr. Humphrys: No, senator. They operate as associated companies. They are under the same management staff.

Senator Carter: How do they proceed for income tax? Do they pay income tax as one company or as two companies?

Mr. Humphrys: As two companies.

The Chairman: If there are no other questions, shall I report the bill without amendment?

Hon. Senators: Agreed.

The Committee then adjourned.



First Session—Twenty-eighth Parliament
1968

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable T. D'ARCY LEONARD, *Acting Chairman*

No. 4

Complete Proceedings on

Bill S-9, intituled: "An Act respecting British Northwestern Insurance Company"; and

Bill S-11, intituled: "An Act to incorporate Aetna Casualty Company of Canada".

WEDNESDAY, OCTOBER 23rd, 1968

WITNESSES:

Department of Insurance: R. Humphrys, Superintendent.

British Northwestern Insurance Company: James K. Hugessen, Counsel.

Aetna Casualty Company of Canada: J. H. C. Clarry, Q.C., Counsel. G. E. Rhine, Vice-President, Field Administration Department, Aetna Casualty and Surety Company, Hartford, Connecticut.

REPORTS OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Fergusson	McDonald
Aseltine	Gélinas	Molson
Beaubien (<i>Bedford</i>)	Gouin	O'Leary (<i>Carleton</i>)
Beaubien (<i>Provencher</i>)	Grosart	Paterson
Benidickson	Haig	Pearson
Blois	Hayden	Phillips (<i>Prince</i>)
Bourget	Hays	Rattenbury
Burchill	Inman	Roebuck
Carter	Irvine	Smith (<i>Queens-</i> <i>Shelburne</i>)
Choquette	Isnor	Thorvaldson
Connolly (<i>Ottawa West</i>)	Kinley	Vaillancourt
Cook	Laird	Walker
Croll	Lang	Welch
Desruisseaux	Leonard	White
Dessureault	Macdonald (<i>Cape Breton</i>)	Willis—(49)
Everett	MacKenzie	
Farris	Macnanughton	

Ex Officio members: Flynn and Martin.

(Quorum 9)

ORDERS OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, October 1st, 1968:

"Pursuant to the Order of the Day, the Honourable Senator Molson moved, seconded by the Honourable Senator Smith (*Queens-Shelburne*), that the Bill S-9, intituled: "An Act respecting British Northwestern Insurance Company", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Molson moved, seconded by the Honourable Senator Smith (*Queens-Shelburne*), that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

Extract from the Minutes of the Proceedings of the Senate, Wednesday, October 16th, 1968:

"Pursuant to the Order of the Day, the Honourable Senator Cook moved, seconded by the Honourable Senator Isnor, that the Bill S-11, intituled: "An Act to incorporate Aetna Casualty Company of Canada", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Cook moved, seconded by the Honourable Senator Isnor, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, October 23rd, 1968.

(4)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Aseltine, Beaubien (*Bedford*), Burchill, Carter, Connolly (*Ottawa West*), Croll, Desruisseaux, Everett, Fergusson, Gouin, Hays, Inman, Irvine, Isnor, Kinley, Laird, Leonard, Macnaughton, McDonald, Molson, Smith (*Queens-Shelburne*), Thorvaldson and Willis—(23).

Upon motion, the Honourable Senator Leonard was elected *Acting Chairman*.

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Upon motion, it was *Resolved* to recommend that 800 English and 300 French copies of this day's proceedings be printed.

Bill S-9, "An Act respecting British Northwestern Insurance Company", was read and considered.

The following witnesses were heard:

Department of Insurance:

R. Humphrys, Superintendent.

British Northwestern Insurance Company:

James K. Hugessen, Counsel.

Upon motion, it was *Resolved* to report the said Bill without amendment.

At 9.45 a.m. the Committee proceeded to the next order of business.

Bill S-11, "An Act to incorporate Aetna Casualty Company of Canada", was read and considered.

The following witnesses were heard:

Department of Insurance:

R. Humphrys, Superintendent.

Aetna Casualty Company of Canada:

J. H. C. Clarry, Q.C., Counsel.

G. E. Rhine, Vice-President, Field Administration Department, Aetna Casualty and Surety Company, Hartford, Connecticut.

Upon motion, it was *Resolved* to report the said Bill without amendment.

At 10.15 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORTS OF THE COMMITTEE

WEDNESDAY, October 23rd, 1968.

The Standing Committee on Banking and Commerce to which was referred the Bill S-11, intituled: "An Act to incorporate Aetna Casualty Company of Canada", has in obedience to the order of reference of October 16th, 1968, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

T. D'ARCY LEONARD,
Acting Chairman.

WEDNESDAY, October 23rd, 1968.

The Standing Committee on Banking and Commerce to which was referred the Bill S-9, intituled: "An Act respecting British Northwestern Insurance Company", has in obedience to the order of reference of October 1st, 1968, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

T. D'ARCY LEONARD,
Acting Chairman.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Wednesday, October 23, 1968.

The Standing Committee on Banking and Commerce, to which was referred Bill S-9, respecting British Northwestern Insurance Company met this day at 9.30 a.m. to give consideration to the bill.

The Clerk of the Committee: Honourable senators, in the absence of the chairman is it your pleasure to elect an acting chairman?

Senator McDonald: I move that Senator Leonard be acting chairman.

The Clerk of the Committee: Is it agreed that Senator Leonard be acting chairman?

Hon. Senators: Agreed.

Senator T. D'Arcy Leonard (*Acting Chairman*) in the Chair.

The Acting Chairman: We have before us today two bills that originate in the Senate. Do we have the usual motion for the printing of 800 copies in English and 300 copies in French of our proceedings?

Upon motion, it was *resolved* that a verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 copies in French be printed.

The Acting Chairman: The first item on our agenda is Bill S-9, respecting British Northwestern Insurance Company. This bill was sponsored by Senator Molson, and there are witnesses present from the company in the persons of Mr. R. D. Allan, Secretary Treasurer; Mr. I. B. Hurst, Underwriting Manager, and Mr. James K. Hugessen, Counsel. Also present is Mr. R. Humphrys, Superintendent of Insurance.

Do you wish to speak to the bill, Senator Molson?

Senator Molson: I do not think so, Mr. Chairman. As the representatives of the company are here, I think it would be better if they proceed.

The Acting Chairman: Shall we follow the usual practice of asking Mr. Humphrys to come forward as a witness?

Hon. Senators: Agreed.

The Acting Chairman: Mr. Humphrys, would you tell the committee your views on the bill?

Mr. R. Humphrys, Superintendent of Insurance: Mr. Chairman and honourable senators, the purpose of this bill, as has been explained, is to change the name of the British Northwestern Insurance Company, and to increase its capital.

This company is a federally incorporated company transacting fire and casualty business in Canada. It is a subsidiary of the Eagle Star Insurance Company, a British Company of world-wide renown and a company that is very old and very large.

The change of name is desired on the part of the parent company to identify its subsidiary more closely with this group. It also indicates a desire on the part of the owners of the company to consolidate their Canadian operations, and to direct more of their Canadian activities through this Canadian company.

The parent company, the Eagle Star Insurance Company, also does insurance in Canada. It is registered under the Canadian and British Insurance Companies Act, and it has operated under its own name and through its subsidiary, and also formerly through two other subsidiaries. It intends, however, to concentrate its efforts more through this particular company, and wishes the change of name, as I say, to identify the company more closely with this group.

The request for an increase in capital is part of this program since if the volume of business written by this company increases it will from time to time need to increase the capital in order to provide the necessary safety margin for the policyholders.

Senator Croll: Is there not a company named the Eagle Star Insurance Company now?

Mr. Humphrys: Yes, it is a British company, the parent of this company.

The Acting-Chairman: Are there any other questions of Mr. Humphrys? Mr. Hugessen do you or the officers of the company wish to add anything to what Mr. Humphrys has said?

James K. Hugessen, Counsel, British Northwestern Insurance Company: Unless there are any questions that you or any of the senators wish to put, I cannot improve on what Mr. Humphrys has said.

The Chairman: Does anybody wish to ask any further questions of Mr. Humphrys or of Mr. Hugessen?

Senator Croll: Do I understand that the Eagle Star takes over this company, Mr. Humphrys?

Mr. Humphrys: The Eagle Star now owns all the capital stock of this company. The Eagle Star writes policies in its own name and this company writes policies now in its present name, the British Northwestern. In the future they will tend to write most of their business in Canada through this company which, if this bill is approved, will be called the Eagle Star Insurance Company of Canada, so that both companies will continue to be active in Canada, but the main emphasis will be through the Canadian company.

Senator Croll: Is there not a British company that does business in Canada?

Mr. Humphrys: Yes. I think there may be some tendency to direct business that was formerly written by policies issued by the parent company so that it will now be written through this company.

Senator Kinley: The ownership still remains?

Mr. Humphrys: Yes. It is fairly common for parents and subsidiaries to be active in the foreign casualty insurance field. There are many examples where there is a parent company with many subsidiaries. There were three subsidiaries in this group, all actively selling business in Canada. Two of them have been closed out as far as business in force is concerned. They are still intending to operate through this company, which will be a

Canadian company. They will keep the parent company in Canada also, principally I believe for the purposes of general insurance.

Senator Burchill: Where is the head office of the company?

Mr. Humphrys: In Toronto.

Senator Kinley: How are the directors elected?

Mr. Humphrys: The directors are elected by the shareholders.

Senator Kinley: Does the stock reside in England?

Mr. Humphrys: The stock is owned by the parent company but a shareholder is entitled to attend the annual meeting and vote its stock; consequently it votes the directors.

Senator Macnaughton: You have no objection to the bill, Mr. Humphrys?

Mr. Humphrys: No.

Senator Croll: I have no objection to the bill either, but I do not quite understand just what they are attempting to do.

The Acting Chairman: It might have been a little simpler if they had started out without having had the British Northwestern in the first place and simply incorporated a Canadian company called by the same name as the parent company in England. This is really what they are doing.

Senator Croll: I realize that. If I have insurance with the British Northwestern Insurance Company now will I continue my policy with the British Northwestern Company or do they transfer me over to Eagle Star?

Mr. Humphrys: You will continue your policy with this company and in all respects your policy will be valid and unchanged, but the name of the company is being changed so that when your policy is renewed you would get a new policy which would carry the name of Eagle Star of Canada, but it is the same corporation, the same corporate entity with the same liabilities.

Senator Thorvaldson: Really it is just a change of name. That is all that is involved in this bill.

Mr. Humphrys: Exactly.

Senator Thorvaldson: Plus the increasing of the capitalization.

The Acting Chairman: The usual protective clauses are included with respect to existing policyholders.

Senator Carter: I imagine the par value of the shares given of \$40 is a nominal value. What is the real market value of the shares today?

Mr. Humphrys: It would not be possible to say exactly, because since all the shares are owned by the parent company there is not a market value for them. If they went out to offer some of the market I am not sure how much they would get.

Senator Croll: In any event, they would be worth less today than they were last night.

Mr. Humphrys: This is a foreign casualty insurance company, not life.

Senator McDonald: Are the directors of the British Northwestern Insurance Company Canadian or British?

Mr. Humphrys: The law requires that the majority of the directors of a Canadian company become Canadian citizens resident in Canada, and that is the case here. There are some directors who are resident in Britain; there are two directors who are not resident in Canada.

Senator McDonald: I presume the directors of the new company will be the same directors as are acting for the British Northwestern?

Mr. Humphrys: Yes, although it is not correct to refer to this as a new company. It is the same company with a change of name; nothing else is changed.

Senator Macnaughton: Really the purpose is to phase out the name British Northwestern and eventually write all new policies in or transfer them into the new name of Eagle Star.

Mr. Humphrys: Yes.

Senator Thorvaldson: I do not know that that is accurate.

Mr. Humphrys: Not actually phasing out. It is a change.

Senator Thorvaldson: It is merely a change of name. All you are doing is phasing out the name, which is done immediately upon this act getting Royal Assent.

The Acting Chairman: Are there any other questions?

Senator Burchill: I move that we report the bill without amendment.

The Acting Chairman: Is it agreed that we report the bill without amendment? Is that your pleasure?

Hon. Senators: Yes.

Whereupon the committee concluded its consideration of the bill and proceeded to the next order of business.

The Acting Chairman: We pass to Bill S-11, an act to incorporate Aetna Casualty Company of Canada. Mr. Humphrys will also be a witness on this bill. Senator Cook was the sponsor but I do not see him here. I have the list of witnesses from the company itself: we have Mr. John H. C. Clarry, Q.C., Counsel; Mr. Geo. E. Rhine, Field Administration Department, Hartford, Connecticut; Mr. John C. Graham, Counsel, Aetna Casualty and Surety Company of Hartford; Mr. John J. Choate, General Manager, Canadian Office, Aetna Casualty and Surety Company, Toronto and Mr. Ronald Belfoi, Parliamentary Agent.

It is your pleasure to have Mr. Humphrys speak to this bill in our usual way?

Hon. Senators: Agreed.

Mr. R. Humphrys, Superintendent of Insurance: Mr. Chairman, honourable senators, this bill is for the purpose of incorporating a new insurance company with power to transact all classes of insurance except life insurance. If incorporated the company would be owned by the Aetna Casualty and Surety Company, a United States Company that has been authorized to transact insurance in Canada over many years.

The purpose of forming this company is to direct the Canadian business of the Aetna Casualty and Surety Company through a Canadian subsidiary rather than continue to transact its business on solely a branch basis, as has been the case in the past.

Foreign companies can come into Canada and become registered under the insurance companies acts and transact business here on a branch basis if their financial condition is sound. This is a very common method of doing business in Canada. Many of them, however, form or purchase Canadian incorporated companies and do business in Canada through the Canadian subsidiary. The desire here is to form a new Canadian company and direct the Canadian business of this group through the Canadian subsidiary.

Although the parent company, the Aetna Casualty and Surety Company, has been registered in Canada for many years, it has not been very active on the Canadian scene. If this company is formed I believe they will use it to conduct business in a more vigorous way in Canada through the subsidiary. The bill is in a standard form for incorporating companies for this purpose. The authorized capital is \$5 million. The company will be required to have at least \$500,000 paid in cash and at least \$500,000 in surplus paid before it can commence business. I think, however, the company will probably capitalize the new subsidiary at a higher level than that, if my understanding is correct.

Senator Croll: Mr. Humphrys, there was a bill introduced in the other place, was there not, with respect to this company last year?

Mr. Humphrys: Yes, senator, a bill to incorporate this company has been before Parliament on more than one occasion.

Senator Croll: But not here?

Mr. Humphrys: Yes, it has been passed by the Senate on at least two previous occasions.

Senator Croll: The same bill?

Mr. Humphrys: Yes, the same bill.

Senator Thorvaldson: Mr. Humphrys, is there any association between the American company and the Aetna Life Insurance Company?

Mr. Humphrys: Yes, senator.

Senator Thorvaldson: Is it wholly owned?

Mr. Humphrys: Perhaps I could call on Mr. Clarry.

Mr. John H. C. Clarry, Q. C., Counsel, Toronto, Ontario: The Aetna Life and Casualty Company is the parent company of the Aetna Life Insurance Company of Hartford and of the Aetna Casualty and Surety Company of Hartford.

Mr. Humphrys: It has been a holding company which owns both the Aetna Life Insurance Company and the Aetna Casualty and Surety Company, and this company will be owned by the Aetna Casualty.

Senator Thorvaldson: So it is the whole Aetna empire on this continent?

Mr. Humphrys: Yes.

Senator Thorvaldson: I take it that \$500,000 is the minimum capital required in regard to these companies in Canada.

Mr. Humphrys: Yes, senator. We think that no company should be formed or start business until it has at last \$500,000 paid and \$500,000 in surplus—at least \$1 million in cash. The way events are trending in modern times, I am not sure that that should not be increased. I believe that, if this company is formed, in actual fact there will be a larger capitalization to start with.

Senator Thorvaldson: May I also ask, do those amounts apply also in regard to, say, United States companies that decide to do business under licence in Canada? In other words, are they required to have on deposit a million dollars here in Canada?

Mr. Humphrys: It would depend on the classes of insurance the company wished to transact. If it wanted to transact all classes of insurance, they would have to have \$1 million initial deposit, to start with, and, subsequently, they would have to keep assets in Canada under our control at all times at least equal to their liabilities in Canada.

Senator Croll: Mr. Humphrys, my recollection is that when this bill went to the other place on two occasions, as you now remind me, the objection taken there was foreign ownership, is that correct?

Mr. Humphrys: Yes, this point was raised quite strongly in the debate. There were also views expressed about the formation of insurance companies generally. But, as I recall, there were these two points.

Senator Croll: I thought the paramount objection was the one dealing with foreign ownership. That is my recollection.

Mr. Humphrys: Yes.

Senator Everett: Mr. Humphrys, does a newly incorporated insurance company have to file with you its re-insurance arrangements prior to incorporation?

Mr. Humphrys: They are not formally required, but as part of our examination and inspection procedure we always determine what re-insurance arrangements the company has, and we are always concerned to determine the maximum amount that the company retains for its own risk in comparison with its size and capitalization.

Senator Everett: Could you tell me, on the basis of half a million dollars capitalization and half a million dollars surplus, how much is the initial risk of this company?

Mr. Humphrys: I do not know what its specific plans are. I think that would wait until the company was formed, and a company of that size would not, I think, retain for its own risk more than a maximum amount of perhaps \$10,000 to \$15,000 on any one risk.

Senator Everett: If, indeed, they could not come to an arrangement of \$10,000 or \$15,000 and entered into an arrangement of \$50,000, would you require additional capital and surplus and additional deposits?

Mr. Humphrys: Yes, senator, we would be very much concerned if a company of this size retained for its own risk an amount of up to \$50,000. I think it would be too much. So, we would attempt to have it enter into appropriate re-insurance arrangements, and if they could not, we would insist that they not write policies of that size. Another alternative, as you suggest, would be to increase the capital and surplus to a point where it could take on risks of that size without undue risk.

Senator Everett: But, in approving this sort of capitalization, we can reasonably expect that it will re-insure over, roughly, \$10,000 to \$15,000?

Mr. Humphrys: Yes.

Senator Everett: Do you have any idea where they would be making their re-insurance arrangements? Would they be with a Canadian re-insurance carrier or with the parent company?

Mr. Humphrys: I should think it likely that a good deal of the re-insurance arrangements would be with the parent company, but other arrangements might go in the general market, depending on where they can get favourable treaties and arrangements for this type of business. I have not received from them any specific plan on re-insurance, since the company is not yet formed, but I would not think the pattern would differ very much from the pattern they are now following with respect to their business in Canada on a branch basis.

Senator Everett: This is, of course, a subsidiary of a very large American company.

Mr. Humphrys: Yes.

Senator Everett: If a new company came to you and it was not in that position, and asked for incorporation on a similar basis, would you be more interested in its re-insurance arrangements than you are in the case of this company?

Mr. Humphrys: Yes. We would want to know very definitely the type of business it intended to do, and how it intended to develop its activities, all with a view to determining whether the initial funds were going to be sufficient to protect policyholders and enable it to develop its business in any significant way, because we would take the view that there is not any use starting off with inadequate capital and surplus and running into a problem immediately.

Senator Everett: So, because this is or will be a subsidiary of an American carrier, you are less rigorous in your examination?

Mr. Humphrys: I would not like to say we are less rigorous. I think we take into account the fact it is a subsidiary of a very large and strong company, a company we have known and have supervised and worked with over a period of 50 years, or more, in its activities in Canada. These are factors that enter into the consideration but, nevertheless, in our supervision of a company we would expect this company, as an individual corporation, always to be in a position where it offers adequate protection for its policyholders, so we are never in a position where we are dependent upon money coming from the parent to help it meet its liabilities. So, we want to be in a position, at any time, if this company were cut off from its parent or sold, in which it would still be a viable enterprise and still have adequate capital and surplus to protect its policyholders.

Senator Macnaughton: Mr. Humphrys has referred to \$1 million being subscribed before doing business, and yet in clause 4 it mentions \$500,000. Am I right in assuming that this is purely the technical drafting of the bill?

Mr. Humphrys: The first refers to subscription and the second to paid. An amount of \$1 million would have to be subscribed, and at least \$500,000 paid; and if they stuck to the minimum, it could leave the other \$500,000 as callable on the shareholders but, in actual practice, I believe they would pay up the initial subscription.

Senator Kinley: With regard to these American companies they place a guarantee

with the Government. Is it \$1 million they must put up for the Government as a guarantee?

Mr. Humphrys: The company must make a deposit with the Government in amounts that depend upon the classes of insurance for which it would be registered. It would not have to deposit as much as \$1 million.

Senator Kinley: There is no obligation for them to have Canadian stockholders?

Mr. Humphrys: No.

Senator Kinley: Insurance is all international, anyway. We have large insurance companies, especially life insurance companies, operating in other countries. There is an international freedom about insurance is there not?

Mr. Humphrys: Yes, senator, there is a great deal of insurance transacted internationally.

Senator Kinley: I know that British insurance companies in Canada have special privileges under our insurance act.

Mr. Humphrys: I would not say that they have any special privileges, senator.

Senator Kinley: They do not have to comply with some conditions of the Canadian insurance act, do they? I am thinking of Lloyds, for instance.

Mr. Humphrys: Lloyds is not subject to the federal act, that is correct, sir, but incorporated companies are.

Senator Thorvaldson: Why is Lloyds not subject to the federal act, or is that too long a story?

Mr. Humphrys: Well, it is a long story.

Senator Thorvaldson: Very well; do not bother.

Senator Willis: I move that the bill be reported.

The Acting Chairman: I think some other honourable senators still have questions. We were dealing with Senator Thorvaldson's question.

Senator Thorvaldson: My question, Mr. Chairman, requires a long answer, and I will get it from Mr. Humphrys later.

The Acting Chairman: Have you anything to add, Mr. Clarry?

Mr. Clarry: I have nothing to add, Mr. Chairman, but I will be glad to try to answer any questions.

The Acting Chairman: Can you indicate to the committee what capital you do intend to put up?

Mr. Clarry: Yes; \$1 million described as capital, and \$2 million as surplus, for a total of \$3 million.

The Acting Chairman: That is, before the company commences business?

Mr. Clarry: Yes.

Senator Croll: Mr. Clarry, following on that question, have you an idea of how many shareholders this company has in Canada?

Mr. Clarry: The life and casualty company—I do not know whether Mr. Rhine has that information.

Mr. George E. Rhine, Field Administration Department, Hartford, Connecticut: Mr. Chairman and honourable senators, there are something in excess of 300 shareholders.

Senator Croll: How many shareholders has the company altogether?

Mr. Rhine: Perhaps 25,000.

Senator Everett: I assume that the newly incorporated company is taking over existing business.

Mr. Clarry: Yes, that is correct.

Senator Everett: Can you tell me the premium volume of that business?

Mr. Clarry: As Mr. Humphrys has indicated, the Aetna Casualty and Surety Company is operating in Canada now, and it has increased its operations over the last few years. Mr. Choate, who is with us, is General Manager of the Canadian operation. This Canadian operation will be transferred to the new corporation when it is incorporated, and I guess we hope it will grow.

Senator Everett: That only partially answers my question. I asked you if you knew the annual premium volume that is being written now.

Mr. Clarry: Perhaps Mr. Rhine or Mr. Choate can answer that.

Mr. Rhine: Mr. Chairman and honourable senators, our statement filed last year showed

premiums of slightly over \$4 million, as I recall.

Mr. Humphrys: Yes, \$4.4 million.

Senator Everett: On how much of that business did you enjoy an underwriting profit?

Mr. Rhine: We did last year, sir. Mr. Humphrys has the figures before him, and perhaps he can answer that exactly.

Mr. Humphrys: The underwriting profits shown in the statement for the year 1967 were \$785,000.

Senator Kinley: After income tax?

Senator Everett: On a premium income of \$4 million?

Mr. Humphrys: Yes, and that was before tax.

The Acting Chairman: Are there any other questions?

Senator Thorvaldson: Yes, Mr. Chairman. I think we might as well get a complete answer to Senator Croll's question. What he was wanting to know was what proportion of the share capital of the parent company which, I take it, is Aetna Casualty, is owned in Canada.

Mr. Clarry: Senator, it would be a little difficult to give a precise figure but, as Mr. Rhine has indicated, there are approximately 300 shareholders, so it would be a relatively small proportion.

Senator Thorvaldson: But that is meaningless. They might each own one share.

Mr. Clarry: I do not think we have the precise relationship with regard to the number of shares.

Senator Thorvaldson: I am talking about the percentage of money.

Mr. Clarry: That is, of the shareholdings in the parent company?

Senator Thorvaldson: Yes.

Mr. Rhine: I understand your question, but I am afraid I cannot answer it. You are asking how many dollars of value is represented by these some 300 shareholders. Is that not what you are asking?

Senator Thorvaldson: Yes, what I am wanting is the percentage of Canadian ownership in this company. I ask that question because I

think it is something you will meet in the other house, and I am trying to help you a little bit. It is also, I think, something we should know, since the other house has made an issue of this very point.

Mr. Rhine: It is a figure we shall have to determine.

Senator Croll: Do you mean to say that you were not asked that question during the two sessions you had before the other house?

Mr. Clarry: That is right, that question was not asked.

Senator Croll: Then you can see the use of the Senate. It can be relied upon to come up with something new.

Mr. Humphrys: I think it is fair to say that the proportion of Canadian ownership in the parent company—that is, Aetna Casualty Insurance, which is a very large United States Company—is extremely small. One might say it is almost negligible.

Senator Croll: I was going to suggest that it is infinitesimal.

Mr. Humphrys: This company would be a subsidiary of that company, and consequently no shares of this company would be on the Canadian market.

Senator Everett: Could Mr. Clarry tell us what classes of business the company has been writing—the general classes?

Mr. Clarry: Perhaps it would be easier if you asked Mr. Rhine or Mr. Humphrys, because they may have the precise figures.

The Acting Chairman: Mr. Humphrys, would you answer Senator Everett's question?

Mr. Humphrys: The total direct premiums amounted to a little over \$4 million. Of that amount close to \$1 million was automobile insurance. There was \$720,000 of premiums in fire insurance: \$165,000 in personal property insurance; \$148,000 in real property insurance; and about \$700,000 in guaranty business—that is, fidelity, surety risks—and another \$300,000 in employers' liability.

Senator Croll: You may not have these figures, Mr. Humphrys, but I understood Mr. Rhine to say that on a premium income of \$4.4 million there was a profit of some \$780,000. Is that broken down with respect to how much is for casualty and how much is for other parts of the insurance business in the

same way, showing the different profits under different headings?

Mr. Humphrys: No, we could not give that breakdown precisely, senator, because the expenses of the company have not been analyzed in detail by classes of insurance.

Senator Croll: You do not require that information?

Mr. Humphrys: No. We do get some information on the ratio of claims to premiums by classes of insurance, which we can give, but that does not necessarily give the profit from each class since to get the profit one would have to analyze the expenses and allocate them by classes of insurance as well.

Senator Croll: What I am concerned about is this. Is there anything in these reports to indicate that the automobile insurance is a losing business?

Mr. Humphrys: Well, I can indicate, for example, that in the field of automobile liability coverage in 1967 the claims amounted to 75 per cent of the premiums, which I think is likely to produce a net loss because the expenses of operation would not likely be under 25 per cent. So, I think they would have a net loss position in respect of automobile liability.

On the other automobile insurance—that is, property damage; damage to the automobile in collision, and that type of insurance—the loss ratio was 63 per cent, and they might possibly have broken even on that.

Senator Croll: Where did the profit come from?

Mr. Humphrys: The profit would come from the other lines—guarantee business, fire business, which are major lines as well.

Senator Croll: What is the guarantee business?

Mr. Humphrys: Fidelity and surety.

Senator Everett: Is it a requirement of the act that investments be made in Canadian securities or does the company have the right to invest in certain foreign securities?

Mr. Humphrys: As a foreign casualty company it is not restricted to Canadian securi-

ties. It is required to maintain assets in Canada to cover its liabilities in Canada, but under the law it is not required to maintain those assets in Canadian securities. As a matter of practice we in the department get companies to maintain Canadian securities to cover Canadian liabilities because we think it is not a good thing to have assets in one currency against liabilities in another.

Senator Everett: I agree with that. I suppose up to now there would be no way of telling where they had their investments?

Mr. Humphrys: I gave you an answer in relation to a Canadian company. So far as the Aetna Casualty and Surety Company and its business in Canada is concerned, it is required to cover its liabilities in Canada with securities deposited here, and they must all be in Canadian securities. They have the right under law to deposit securities of their own government, but in practice their deposits have all been in Canadian securities.

Senator Everett: Are they free to deposit where they like under the terms of the act?

Mr. Humphrys: As a foreign company they are required to keep assets in Canada to cover their liabilities in Canada, and those assets must be in Canadian securities.

Senator Everett: By "liabilities" do you mean reserve for claims?

Mr. Humphrys: I mean all the liabilities in Canada—the unearned premiums, outstanding claims, all liabilities. As a Canadian company they would not be restricted to investing only in Canadian securities; they could invest in other securities, but in practice Canadian companies do not exercise that right to the extent of buying foreign currency securities to match Canadian liabilities. There is a degree of freedom there because traditionally Canadian companies have done a great deal of business outside Canada, particularly in the life field, and the way must be open to them to buy foreign securities to cover their liabilities.

Senator Thorvaldson: Some while ago I saw a statement that the underwriting profit of this company had been some \$700,000 out of premiums written of \$4.4 million. I presume

that would be for 1967. I feel that in fairness to this and other insurance companies it should be said that in the last three years prior to this year it is my understanding that these companies had a very, very rough time, as I think these gentlemen recognize; consequently, I did not want to have this on the record without reference to the fact that last year may have been a pretty good year in the insurance business, but it came after very rough years when I know many of these companies had underwriting losses rather than underwriting profits. Perhaps Mr. Humphrys would like to confirm or deny that.

The Acting Chairman: Do you wish to make a comment on that, Mr. Humphrys?

Mr. Humphrys: I think that is generally true. Looking at the situation as a whole, this company the Aetna Casualty and Surety Company, has had reasonable success. Its underwriting profits in 1966 were \$675,000, but in 1965 they were \$177,000. It should be noted, looking at the American company as a whole, in the year 1967 they reported an underwriting loss of \$20 million.

Senator Thorvaldson: An underwriting loss?

Mr. Humphrys: Yes, over their entire operation. They made a profit in Canada, but taking the total of the company they did not make an underwriting profit.

Senator Kinley: This is a casualty company. It is a little different from the ordinary insurance company. I see listed aircraft insurance, automobile insurance, earthquake insurance. All these deal with situations in which people are hurt. What will medicare do to you? How do you view medicare?

Mr. Rhine: This proposed company would not write any form of medical insurance; that is accident insurance or sickness insurance. Those forms of insurance are generally written in life insurance companies or companies formed for the special purpose of writing sickness and accident insurance, group health and so on.

Senator Kinley: In automobile insurance you deal with personal problems, so in that way you get in contact with persons?

Mr. Rhine: Yes.

Senator Kinley: They will all be covered by medicare. Do you face that situation? As I see it in aircraft insurance every policy I have seen is with Omaha Nebraska. When you go to American flying fields you find the same thing, so they must be doing a big business in Canada. Are they a Canadian company?

Mr. Rhine: I do not know whether they have a Canadian affiliate or subsidiary, but they are a large writer of individual aviation accident insurance.

Senator Kinley: How did you compare it with the company in Saskatchewan? This insurance is a government proposition. Are their policies cheaper or more advantageous than the average policy issued by the private company or are they poorer?

Mr. Rhine: I am afraid I cannot answer that question. I am not sufficiently familiar with the details. I do not know whether Mr. Humphrys is or not.

Senator Kinley: It is the only province of Canada that has such an insurance I think.

Mr. Rhine: That is my understanding, yes, sir.

Senator Macnaughton: Perhaps your counsel could answer.

Mr. Clarry: I think honourable senators must draw their own conclusions on that.

Senator Kinley: Do you rebate premiums on merit? For instance, do you give back any of the premiums?

Mr. Rhine: We do on workmen's compensation in the United States, in certain states where this is permitted, based upon the loss experience of the assured. If it is satisfactory they will receive some return.

Senator Kinley: There is no government action on compensation in the United States; it is state insurance?

Mr. Rhine: It is entirely a state matter, yes.

The Acting Chairman: I am just looking at some figures which Mr. Humphrys has and I see that this company had more premium income in Saskatchewan than in Nova Scotia.

Senator Kinley: My interest goes a little further than that.

The Acting Chairman: Are there any other questions? Shall we deal with it clause by clause or have the usual motion to report the bill without amendment.

Senator Croll: I move that we report the bill without amendment.

The Chairman: Is that your pleasure?

Hon. Senators: Agreed.

The committee adjourned.



First Session—Twenty-eighth Parliament
1968

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 5

Complete Proceedings on

Bill C-111, intituled: "An Act to amend the Farm Improvement Loans Act"; and

Bill C-113, intituled: "An Act to amend the Prairie Grain Advance Payments Act".

WEDNESDAY, NOVEMBER 6th, 1968

WITNESSES:

Department of Finance: A. R. Hollbach, Government Finance Division.
Department of Trade and Commerce: R. M. Esdale, Chief, Grain Division.

REPORTS OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Fergusson	McDonald
Aseltine	Gélinas	Molson
Beaubien (<i>Bedford</i>)	Gouin	O'Leary (<i>Carleton</i>)
Beaubien (<i>Provencher</i>)	Grosart	Paterson
Benidickson	Haig	Pearson
Blois	Hayden	Phillips (<i>Prince</i>)
Bourget	Hays	Rattenbury
Burchill	Inman	Roebuck
Carter	Irvine	Smith (<i>Queens-</i>
Choquette	Isnor	<i>Shelburne</i>)
Connolly (<i>Ottawa West</i>)	Kinley	Thorvaldson
Cook	Laird	Vaillancourt
Croll	Lang	Walker
Desruisseaux	Leonard	Welch
Dessureault	Macdonald (<i>Cape Breton</i>)	White
Everett	MacKenzie	Willis—(49)
Farris	Macnaughton	

Ex Officio members: Flynn and Martin.

(Quorum 9)

ORDERS OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, October 31st, 1968:

“With leave of the Senate,

The Honourable Senator Fournier (*Madawaska-Restigouche*) resumed the debate on the motion of the Honourable Senator McDonald, seconded by the Honourable Senator Beaubien (*Provencher*), for the second reading of the Bill C-111, intituled: “An Act to amend the Farm Improvement Loans Act”.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator McDonald moved, seconded by the Honourable Senator Roebuck that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.”

Extract from the Minutes of the Proceedings of the Senate, Wednesday, October 30th, 1968:

“Pursuant to the Order of the Day, the Honourable Senator Sparrow moved, seconded by the Honourable Senator Everett, that the Bill C-113, intituled: “An Act to amend the Prairie Grain Advance Payments Act”, be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Sparrow moved, seconded by the Honourable Senator Everett, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.”

Extract from the Minutes of the Proceedings of the Senate, Thursday,
October 10th, 1968:

"The Honourable Senator Carter moved, seconded by the Honourable
Senator MacKenzie:

That the Standing Committee on Banking and Commerce be
authorized to inquire into and report upon existing legislation regarding
the census and statistics and upon the administration of such legislation
and recommend any changes in such legislation and administration
required to establish and develop the census and statistics as a vital and
efficient aid to the good government of Canada and the advancement of
private business in the public interest.

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, November 6th, 1968.

(5)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aird, Aseltine, Beaubien (*Bedford*), Benidickson, Burchill, Carter, Croll, Fergusson, Gélinas, Haig, Hays, Inman, Isnor, Kinley, Laird, MacKenzie, Macnaughton, Molson, Paterson, Smith (*Queens-Shelburne*), and Willis. (22)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Upon motion, it was *Resolved* to recommend that 800 English and 300 French copies be printed of the proceedings of this day.

Bill C-111, "An Act to amend the Farm Improvement Loans Act", was considered.

The following witness was heard:

Department of Finance:

A. R. Hollbach, Government Finance Division.

Upon motion, it was *Resolved* to report the said Bill without amendment. At 10.30 a.m. the Committee proceeded to the next order of business.

Bill C-113, "An Act to amend the Prairie Grain Advance Payments Act", was considered.

The following witness was heard:

Department of Trade and Commerce:

R. M. Esdale, Chief, Grain Division.

Upon motion, it was *Resolved* to report the said Bill without amendment.

After discussion, and upon motion of the Honourable Senator Smith (*Queens-Shelburne*) it was *Resolved* to establish a Steering Committee composed of the Honourable Senators Hayden (*Chairman*), Bourget, Carter, Molson, Thorvaldson and Walker to determine the procedure to be followed with respect to Senator Carter's motion regarding the Census and Statistics which was referred to the Committee on Thursday, October 10th, 1968.

At 10.50 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORTS OF THE COMMITTEE

WEDNESDAY, November 6th, 1968.

The Standing Committee on Banking and Commerce to which was referred the Bill C-111, intituled: "An Act to amend the Farm Improvement Loans Act", has in obedience to the order of reference of October 31st, 1968, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

Salter A. Hayden,
Chairman.

WEDNESDAY, November 6th, 1968.

The Standing Committee on Banking and Commerce to which was referred the Bill C-113, intituled: "An Act to amend the Prairie Grain Advance Payments Act", has in obedience to the order of reference of October 30th, 1968, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

Salter A. Hayden,
Chairman.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Wednesday, November 6, 1968.

The Standing Committee on Banking and Commerce, to which was referred Bill C-111, to amend the Farm Improvement Loans Act met this day at 9.30 a.m. to give consideration to the bill.

Senator Salter A. Hayden (Chairman) in the Chair.

The Chairman: Honourable senators, we have two bills before us this morning. It is the wish of the committee that we print today's proceedings.

Upon motion, it was resolved that a verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 copies in French be printed.

The Chairman: The first bill is Bill C-111 to amend the Farm Improvement Loans Act. We have Mr. A. R. Hollbach, who is from the Government Finance Division, Department of Finance.

This bill was very well explained during the course of second reading in the Senate and possibly if Mr. Hollbach gave a short explanation, we could look at it section by section.

Hon. Senators: Agreed.

Mr. A. R. Hollbach, Government Finance Division, Department of Finance: Mr. Chairman and honourable senators, the purpose of this bill can be summarized quite briefly by saying that it serves to reactivate a measure in the farm credit field which has proven quite successful over nearly a quarter of a century, a success which of course ceased a few months ago when the then current lending period expired.

The amendments included in the bill can be perhaps divided into two groups, one designed merely to reactivate this measure and the other designed for the purpose of improving the scope of the act in order better

to enable the facilities to serve the farming community.

In the first group there are two amendments, one being the addition of the new guarantee period. The reason for this amendment arises from the fact that the Government guarantee has always been authorized for three-year periods. The last period expired on June 30, and the amendment now before you would add a new guaranteed period, retroactive to July 1, 1968, so that any loans made by chartered banks since the expiry of the old period and before the passage of the bill would be covered by the guarantee, provided of course they have been made under the other provisions of the act as they stood before amendment.

The other provision in this first category concerns the rate of interest. Even before the act formally expired, banks had been increasingly reluctant to make loans under the act, because of the statutory maximum rate of 5 per cent. The proposed amendments would revoke the statutory 5 per cent rate and substitute therefor authority to have the rate prescribed by order in council. As has been indicated by the Minister of Agriculture—who has handled this measure—it is the Government's intention to prescribe a rate by formula, so that a fair and adjustable rate would be prevailing automatically from time to time without a decision by cabinet being required each time.

The other group of amendments is designed to expand the scope of lending activity under this act.

The principal feature here is the addition of land as an eligible loan purpose, where the purchase of land would be an addition to an existing farming enterprise. The rationale here is that this should not merely replace the type of previous lending activity that is now carried on by the Farm Credit Corporation. In many many instances, farmers have an opportunity to buy a relatively small parcel of land, perhaps adjacent to the land they

already own; and in the past some have been finding they had to go to the Farm Credit Corporation, because mortgage credit was involved, without really requiring the kind of technical expertise that the Farm Credit Corporation normally brings to bear in financing the creation of large and new farm units.

An hon. Senator: Probably delay, too.

Mr. Hollbach: The Farm Credit Corporation procedures are perhaps somewhat more rigorous than those of chartered banks lending under the Farm Improvement Loans Act, because of the nature of the mortgage lending business. It is hoped, although it is difficult to foretell, that a not insignificant amount of lending will take place under these new procedures, which would I think help many farmers in treating the more or less incidental purchase of a relatively small parcel of land largely on the same basis as they are now able to handle the purchase of a piece of equipment or a loan for another farm improvement purpose. The act will also bring in for the first time credit unions and mortgage loan companies. As an encouragement to relatively small unit lenders, particularly like credit unions, a change is proposed in the limit on the guarantee provision which was contained in the act as it applies to an individual lender. So far the guarantee of the Government to an individual lender was against loss in an amount equal to 10 per cent of the volume of loans made by that lender during the given lending period. In other words, if Canada's largest chartered bank, say, lent \$100 million during a three-year period, then this chartered bank was guaranteed against a loss up to \$10 million, that is, up to 10 per cent of the \$100 million. And subject to this \$100 million being reached, all claims of that bank were paid in full. But since claims would be substantially below 10 per cent for the large volume lenders, in practice all claims were paid in full. But this would not be the case for smaller lenders, particularly rural credit unions. For example, the credit union movement is very strong and well developed out in Saskatchewan. There may be relatively small credit unions who want to participate and who do not have the operational base to make a really large volume of loans in order to spread the risk actuarially. If only one such credit union made only one loan during the three-year period, say \$25,000, it would have been guaranteed, under the old formula, only up to 10 per cent of that amount, that is, up to \$2,500.

But if it had incurred a total loss on that loan it would have been at risk, in effect, for 90 per cent of the total loan amount. Therefore, the provisions in this act prescribe that the new guarantee will be up to 90 per cent of loans made up to \$125,000, that is, five loans at the new maximum of \$25,000; 50 per cent of the next \$125,000; and 10 per cent of anything over and above \$250,000.

The thought here is that this will encourage the small unit lenders like credit unions to participate more readily under this scheme.

Finally—and I have already briefly mentioned this—the maximum loan amount has been raised from \$15,000 to \$25,000 so as to enable a farmer to borrow for the purchase of land without thereby pre-empting his ability to borrow also under the act, say, for the purchase of equipment.

In connection with the purchase of land I should have mentioned that one other change proposed here is that the maximum repayment period, if the loan is made for the purchase of land, would be extended to 15 years. The maximum repayment period now contained in the act is 10 years; that will be retained for all loan purposes other than the purchase of land.

I think that is all I have to say, Mr. Chairman.

The Chairman: Senator Aseltine.

Senator Aseltine: The chief objection to this bill when it was dealt with in the Senate and in the other place had to do with the amendments to paragraphs (d) to (g) of subsection (1) of section 3. The interest rate in the act as it stands now has been 5 per cent. Is that correct?

Mr. Hollbach: That is correct.

Senator Aseltine: This amendment deals with that section and leaves the rate wide open to be set by regulation by the Governor in Council. Is that correct?

Mr. Hollbach: That is correct.

Senator Aseltine: Well, that is the main objection I have to this act. I do not like that. I do not think we should do that. I think we should, if possible, have the rate appear in the act itself. I would like to know if there is any formula for arriving at this act. I would also like to know if the banks have been consulted with regard to the rate or if any of these new, what we call "near banks", trust

companies, loan companies, insurance companies, credit unions and others have been consulted in this connection, whether they are interested or not.

The Chairman: Your first question, then, is whether there is any formula for determining what this available rate shall be.

Senator Aseltine: Yes.

The Chairman: What could you say to that, Mr. Hollbach?

Mr. Hollbach: There is, so far as I know, no formula as yet. There have been informal consultations at the official level, but the final decision really cannot be made until the bill has been sanctioned by the Parliament, and then the final decision is up to ministers. We as officials have no further contribution to make.

The Chairman: It seems to me that the final decision goes further than that. After all, if you are going to borrow money from the bank, the banks have something to say as to what the rate of interest will be. When they did not have anything to say about the rate in this act, interest rates got much higher than that provided in the statute and it was difficult to get loans.

Senator Kinley: What is the guarantee for the farmer? How do you insure that he will get the benefit from the guarantee? The Government is going to guarantee 10 per cent in order to protect the bank. But what guarantee is there for the farmer?

The Chairman: So far as the individual who is in default?

Senator Kinley: I was much interested in what one of our senators said about the Maritime provinces. It was suggested that they must be pretty low because they do not borrow under this act. They borrow so little. I think that is commendable, because I like to see a farmer without a mortgage on his farm. That is the kind of farmer we like in the Maritimes. But the farmers are small in the Maritimes. What they require is not very much. Banks like to deal in the Maritimes. Their loans are safer, and they want this business. I know, because they will not lend that money at 5 per cent, but will lend all the money you want without the guarantee. So what good is this guarantee to the little farmer?

Senator Aseltine: Do you not think we should deal with the interest matter first, Mr. Chairman?

The Chairman: This is a supplementary question. We will deal with your question first, Senator Aseltine.

Mr. Hollbach: Actually, Mr. Chairman, it seems that the two points raised here are quite intimately linked together and can be treated together. We are concerned not only with the cost of credit but with the mere availability of credit for farmers. Moreover, with a measure of this type, we are really more concerned with the small farmer than with the very large farmer. There are many large farming operations highly successful on a commercial scale out west which require hundreds of thousands of dollars of credit for equipment alone, and they, of course, would not be covered. This plan here has traditionally been of particular help to the small farmer.

I think that is expressed in the fact that even when the maximum loan amount was \$15,000 the average loan was only \$2,500.

To the small farmer the question of availability of credit can be even more important than the question of the cost. The small farmer who does not have a very well established credit rating may get credit from a machinery dealer, for example, for the purchase of equipment at a rate very substantially above what he would be able to borrow under the benefits of this legislation.

Here I can only speculate. I have no facts. Banks operating outside the Farm Improvement Loans Act will of course make loans to better known and more efficient farmers with unquestionable credit rating at whatever going rate they charge. When the smaller farmer applies for a loan, if his credit rating is not so well established, it is he who may have difficulty borrowing at the banks' customary rate reserved for the banks' prime customers. He may have to either pay more to a bank or go to a finance company or a machinery dealer for credit and he will probably pay quite a bit more. When this act is being reinstated, then, the small farmer will again have access to this type of credit because the risk factor is then removed for the bank. The bank can make credit. The bank will continue to apply credit judgment, in that the bank, even under the guarantee, is not expected to make a loan where it knows there is no hope of repayment. This would not be a kindness to the farmer.

With the elimination of the risk factor, the primary beneficiary is the small farmer, and, so far as the level of the rate is concerned, the facts simply are these: that this operates through private lenders, particularly now with the inclusion of credit unions, and private lenders have a certain cost on their own liabilities and they have to put out their funds in a way that will assure them a reasonable return.

The banks have in effect stopped making loans at 5 per cent and there is no reason to believe that they will resume lending under this act at 5 per cent. What exactly the rate will be, I am unable to say. As I mentioned a moment ago, no decision has yet been taken, but it is reasonable to expect that, because of the presence of the Government guarantee, under such a guarantee program the rate is likely to be somewhat lower than what a farmer would have to pay on his own credit rating, although it will be higher than 5 per cent. Just where it will be, I do not know, but all I can say is that even if the interest cost is somewhat higher to many farmers, the fact that this kind of credit will again be available is likely to offset the disadvantage of having a somewhat higher cost of carrying that credit.

Senator Aseltine: There is no formula?

Mr. Hollbach: The Government has stated its intention to decide on a formula as explained by the Minister of Agriculture.

Senator Aseltine: Well, I am not satisfied with the statement.

The Chairman: Well, Senator Aseltine, all the witness can do is give the information. If it does not satisfy you, you have to decide and use your own judgment as to what you will do. The witness is giving all the information he can.

Senator Aseltine: Another question I asked is whether or not there has been any consultation with the banks or credit unions regarding the approximate rate.

Mr. Hollbach: Mr. Chairman, I mentioned that there had been discussions at the official level between officials and bank officials, but that this group of course is in no position to arrive at any definitive conclusions. The final decision is up to the minister. While I said a moment ago there is no formula, I think I should emphasize that no specific formula has as yet been formally agreed to, at least to my

knowledge, but the Government has stated its intention that it will establish a formula which will determine the rate automatically over a period of time, so that once set up on a fair and equitable basis it can be left and the rate would adjust itself automatically to changing monetary conditions.

Senator Hays: Isn't it reasonable that any formula that the Government would be able to come up with would be a sort of Common-sense formula? The \$15,000 figure was completely antiquated. Interest rates had changed over the years. They just could not use the act. You couldn't expect the institutions to subsidize the farmer; it was never a subsidized loan. They were borrowing money at $3\frac{1}{2}$ or 4 per cent and there was a ceiling. Now the act indicates that in dealing with anyone who wishes to borrow money, if in its wisdom the institution lending the money feels the farmer has the assets, it gives the lender an opportunity to have a guarantee on his loan at the prime rate. This would be all you could expect, and it would be expected that any formula would be at the prime rate. If a certain institution is lending at $6\frac{3}{4}$ per cent, it would be that rate rather than $7\frac{1}{2}$ per cent.

The Chairman: If a formula is arrived at which is not realistic at the moment there just won't be any loans.

Senator Molson: I think Senator Hays has really put the question I was going to ask in a different way. To bring it into perspective, is it not true to say that when this act originally came into force this program was very successful and a great many loans were made at a rate of interest which was reasonable to farmers and to the lending institutions, but that has now completely dried up. There has been no money available at these rates. The whole purpose here is to bring this loan program back into some relationship to interest rates today. It is something like the N.H.A. loans. They went out of kilter and money dried up for those, but the adjustments made there permitted them to come back in. There is every reason to suppose that these lending institutions will come back into this business quite successfully and on a large scale. Is this not correct?

Mr. Hollbach: Yes, sir, that is correct.

Senator Benidickson: I have three points. The first is that we have been told, and I have accepted it, that it was an unrealistic

rate. The volume of loans has dried up, but I don't think anybody has provided us with some statistics which would show over the last five years, which is when we got into this expensive money period—I don't think anybody has shown us statistics to show the rate of reduction in volume of lending under this act.

The Chairman: Can we see first of all if the witness has the answer to that?

Mr. Hollbach: The volume did not drop off significantly until late in 1967. In 1964, \$150 million was lent. This jumped to nearly \$203 million in 1965 and then it increased to only \$212 million in 1966. It was still an absolute increase, but a relatively smaller increase, and it dropped slightly to \$203 million in 1967 although presumably the credit needs of farmers continued to grow. Most of this decrease came towards the end of 1967.

Senator Croll: But what about the numbers as well as the amounts? Give us the numbers of loans.

Mr. Hollbach: For the corresponding loan volumes as referred to in 1964 there were some 80,600 loans and the sum involved was \$150 million. In 1965 there was 91,000 loans, and in 1966 it dropped off to 85,000 loans and it dropped still further then to 78,000 loans. In other words the average loan amount increased, which would seem to suggest that some of the larger farmers continued to be served while some of the smaller farmers were starting to be cut out of the program. The figures for the current year—I don't have the exact numbers with me, but in the first quarter of 1968 it was about 25 per cent of the volume of lending for the first quarter of 1967. That is January through March 1968, and then the figures for April to June—there were just a few million lent. By then it had dropped off to insignificant proportions, and it was less than 10 per cent of the normal rate of lending that would have prevailed in other circumstances.

Senator Benidickson: My second question is this: I think it was Senator Aseltine who gave us the figures with respect to the distribution of these rates geographically, and I was impressed and I think Senator Kinley, who sits close to me, was also impressed that the utilization was largely in western Canada. The eastern farmer does not seem to take advantage, or at least he has not done so in the past, of even this very reasonable and attractive rate of 5 per cent.

The Chairman: Do you want confirmation from the witness?

Senator Benidickson: I wonder if the witness could explain why the eastern farmer doesn't see the merit of this credit at such a low rate of interest that has prevailed over the years. I understand the position in Quebec. They have their own lending system.

Mr. Hollbach: I was thinking of the Maritimes in particular. A really good answer to this question goes beyond my competence, because I suspect it would really have to be answered in terms of the agricultural productivity of the various regions of Canada. One thing that I think is important in connection with your question, senator, is that credit only follows the capability to use credit. In other words, where you have a region with highly buoyant agricultural conditions, a large number of good-sized farms with high earnings potential and a high potential to take on and service credit, they are likely to utilize existing credit facilities. In other words, a credit facility tends to be something passive, that is used if the impetus for the use of credit really comes from more general economic conditions of the farming enterprise. I am not really competent to judge the viability of the average Maritime farming enterprise versus the average Prairie farming enterprise. Just from my general background knowledge, I understand that many Maritime farmers do not have as profitable an operation as many western farmers and that therefore their ability to use credit is also impaired and that is reflected in these figures. Does that answer give what you desire?

Senator Benidickson: I have heard it said that for some businessmen to make money it is necessary for them to borrow money to get bigger. I wondered if it is not to the advantage of eastern farmers to make more by means of the provisions of this act in order to become larger and more efficient.

Mr. Hollbach: It goes ahead of what you said senator—the availability of markets for the ready absorption of production.

Senator Benidickson: The third question I had in mind was this. You had already explained this, that the volume dropped very considerably in 1966 and 1967 and dried up noticeably in 1968. I know that interest rates perhaps have been at a peak in 1968, but they were still pretty high—the prime rate that was referred to by Senator Haig was pretty high—in 1966-67. Have you any figures as to

what the prime rate would be currently, to the best risk, a businessman borrowing money from the bank?

The Chairman: You, mean, borrowing without using this particular statute, or borrowing under this statute?

Senator Benidickson: The bank varies its cost of interest in accordance with the security and the wealth and the financial position of the borrower and what is called a prime rate, the lowest rate, the rate that is given to the borrower that they think is in the best position.

Senator Hays: The one who does not need it.

Senator Benidickson: What is the primary rate that the banks recognize?

The Chairman: For those ones who have to be solicited?

Senator Benidickson: What would it be in 1966 at a particular time, and 1967 at a particular time?

Mr. Hollbach: Before I answer this question I have to make one qualification. It is easy for me to answer questions on rates of interest that are published in some authoritative source like Bank of Canada Statistics. The banks prime rate is not published, to my knowledge, in any official source.

Senator Benidickson: It gets into the newspapers.

Mr. Hollbach: That is right, it gets into the newspapers, and the reason why I am mentioning this is because my knowledge of what the bank rate purports to be is based on what I myself read in the newspapers. I have no other more authoritative source as to what the prime rate is. I understand that it is currently at $6\frac{3}{4}$ per cent.

The Chairman: That is what the papers said.

Mr. Hollbach: It had been at one stage $7\frac{1}{4}$ just recently, earlier this year, and prior to that for fairly extended periods of time it had been from $5\frac{3}{4}$ to 6 per cent.

Senator Benidickson: In the period of 1966-67?

Senator Kinley: Is it agreed by the banks that that would be it?

The Chairman: No, no, it has nothing to do with the banks.

Senator Kinley: They are going to have the same problems with the Farm Loans Act. The Farm Loans Act is 5 per cent.

The Chairman: Let us deal with this one first.

Senator Kinley: We are dealing with the principle. I think that giving it to the banks to do it is a splendid idea, but the rate was so low that the banks did not want it. If they gave out the money they got no profit. There is a feature of insurance by a co-operative that makes them insure the loan. If you borrow from a co-operative, I am told you must take out an insurance policy, and they have a charge for that. Some of the farmers say that they benefit from that only if they die, because in that case the loan is satisfied.

Senator Croll: If I recall correctly, you said that the average loan was \$2,500?

Mr. Hollbach: Yes, actually in 1966-67 it was \$2,600.

Senator Croll: Why then do you increase the amount?

Mr. Hollbach: This was to give the benefit of the new loan purpose to those farmers who may already be borrowing up to the old limit for other farm improvement purposes. In other words, under the act as it now stands, a farmer may borrow, say, up to \$10,000 for equipment, up to \$5,000 for clearing and breaking, perhaps for a farm electric system, and then if his farming operation is sufficiently large and he can carry additional mortgage credit, for purchasing an additional parcel of land he would have to go to a mortgage lender and probably to the Farm Credit Corporation in order to get credit for that. The increase in the ceiling merely serves to enable that farmer to buy land up to an additional \$10,000 if he borrowed the maximum \$15,000 for all the other purposes, or vice versa.

The Chairman: The limit on each type is \$15,000, the maximum on the combination is \$25,000.

Senator Croll: The purpose of my question was to see the thinking of the Government, that the purpose was an attempt to bring him under one umbrella and extend as much credit as possible, and the Government is not likely at the same time to do that and make them pay prohibitive interest rates. I thought

that was the thinking of the Government and I thought that the witness might say it but he did not say it, so I have to say it.

The Chairman: If it is not the thinking, it will not work.

Senator Croll: What was the incidence of loss, if any, over a period of some years?

Mr. Hollbach: The losses have been about one-fifth of one per cent. They are running currently about one-fifth of one per cent.

Senator Croll: Are they out of line at all with previous years?

Mr. Hollbach: They have been fairly constant. There have been minor variations, but they have been fairly constant between one-tenth of one per cent and one-fifth of one per cent.

Senator Croll: That is of no significance, really.

Mr. Hollbach: That is right.

Senator Carter: I think the witness said there was some 78,000 or 80,000 loans made a year. Is there any breakdown as to how many of these loans are made by different types of institutions? How many by chartered banks and how many by credit unions, for example, and is there any breakdown between the banks to show that some banks are more inclined to make this type of loan than others?

Mr. Hollbach: Yes, sir. The banks were the only lenders, and still are today. There are, therefore, no statistics available for credit unions. This will be a new experience for credit unions and it may take two or three years to get a feel for the extent to which credit unions will participate in this scheme.

So far as the banks are concerned, there is information available on that. I am looking at the total figures of lending since inception, that is, over the last 24 years. The Canadian Imperial Bank of Commerce lent \$666 million. The Royal Bank of Canada lent \$580 million. The Bank of Montreal lent \$410 million. The Bank of Nova Scotia lent \$201 million. The Toronto Dominion Bank lent \$187 million, and the smaller banks lent close to \$110 million.

Senator Carter: I was thinking that might have some bearing on the question raised by Senator Benidickson as to why the loans seem to be concentrated in the west and why the

people in the east do not seem to take much advantage of the legislation. We have similar legislation for fishermen, and that legislation is no good for Newfoundland fishermen at all, because there is no accessibility to banks. There are only one or two banks interested in making this type of loan and they are not accessible to the fishermen. The same thing might apply to farmers in the eastern part of Canada.

I have two other questions, Mr. Chairman. When a farmer wants to negotiate a loan, is he entirely on his own as between himself and the bank manager? Or is there any Government agency to help and to advise him or negotiate for him?

Mr. Hollbach: If he wishes advice he certainly is free to consult the Farm Credit Corporation. I am sure that the Farm Credit Corporation, which has many experts in agricultural operations, would be glad to assist an individual farmer with advice, even though they may not be asked to make him a mortgage loan. In fact, I understand that the Chairman of the Farm Credit Corporation is most anxious to expand this kind of credit advisory service for the benefit of farmers. In other words, a farmer who wishes to borrow only from the chartered banks or from his credit union under this act, but who feels he needs expert advice in order to best utilize this credit, no doubt will be able to get expert advice from the Farm Credit Corporation.

Senator Carter: In the case of credit unions they usually charge one per cent per month. That used to be the rate. It may have gone up. If a farmer negotiates a loan at 12 per cent a year, or one per cent a month, does that rate have to be approved by the Governor in Council or is it just entirely up to an agreement between the farmer and the credit union?

Mr. Hollbach: What the Government formula will do is establish a ceiling. It will be, as before, one of the conditions of the guarantee that the rate of interest charged by the lender under the loan contract will not exceed that ceiling. It could be below the ceiling. This will apply in all fairness to all lenders, chartered banks as well as credit unions.

In other words, whatever the rate may be, a credit union wishing to make a farm improvement loan to a member could not charge more than this prescribed ceiling rate.

Senator Hays: Do you have any statistics on the amount of loans under this act in western Canada? My experience has been that if a farmer wanted \$35,000, then under the old act the banker would say, "All right, we will let you have \$35,000. You will get \$15,000 under the Farm Improvement Loans Act at a certain rate. Then you have the next \$10,000 at a second rate and the last \$10,000 at a third rate." I suppose he does his arithmetic and brings out an average rate. Do you have any statistics on the amount of farm improvement loans that are used as a sort of duplicate in that way?

The Chairman: You mean the farmer borrows on his own credit without the aid of the guarantee?

Senator Hays: Yes. He uses the two together. The banker sits down and says, "Well, I will let you have \$15,000 on the farm improvement loan. On your bonds I will let you have another \$10,000 and on your livestock another \$10,000."

The Chairman: Except that I understand that when a farmer goes in to borrow under this statute he has to disclose all his liabilities.

Senator Hays: He does in any event.

The Chairman: So what he will be lent in this particular transaction will be gauged on what his liabilities are?

Senator Hays: Mr. Chairman, I have borrowed lots of money from the banks, and any time that I sat down before the banker this is the way he determined how much he was going to let me have. It was on the basis of my securities. They generally start off with the farm improvement loan. "I will let you have \$15,000 on this. On your bonds so much," and so on.

Mr. Hollbach: Mr. Chairman, I have only the statistics by province under the Farm Improvement Loans Act. Therefore, I cannot give you figures for other loans to farmers without the guarantee. This information is available from the Bank of Canada only for the country as a whole. In other words, I could, by way of example, give you the breakdown by province of loans made under the Farm Improvement Loans Act.

Senator Hays: You do not have any information in connection with my question?

Mr. Hollbach: Only for Canada as a whole. For instance, in December of 1967 there were outstanding on the books of the chartered banks \$433 million worth of farm improvement loans and \$590 million of all other loans to farmers. Now, most of this, presumably, would be for working capital. Most of this would be short term financing.

Senator Hays: There may be a combination of both.

Mr. Hollbach: That is right. There will be some term credit in there outside of the guarantee. So far as the breakdown of farm improvement loans lending is concerned, here are some indicative figures. In 1967, of the \$204 million lent that year in total, and I am reading them now in the order of magnitude, the largest portion, \$65 million, was lent in Alberta. \$59 million was lent in Saskatchewan, \$43 million in Ontario, \$24 million in Manitoba, close to \$8 million in British Columbia, \$2.2 million in Prince Edward Island, \$1.1 million in Nova Scotia, and also \$1.1 million in Quebec. But as one honourable senator has indicated earlier this is simply due to the fact that in Quebec they have their own farm improvement loan scheme. Then it is \$980,000 in New Brunswick.

Senator Benidickson: Mr. Chairman, until now there has been a distinct separation with respect to the purposes of the Farm Improvement Loans Act and the Farm Credit Act. This has been the case up until recently. It was not possible to use the Farm Improvement Loans Act for the purchase of land. But now either act can be used under certain circumstances for the purchase of land.

The Chairman: Yes, with limitations on the dollar amount.

Senator Benidickson: Yes, the maximum is different. In the Farm Credit Act it is different from the \$15,000 in this act. Now has the Farm Credit Act a fixed rate of interest for the maximum?

Mr. Hollbach: It did, senator, until the amendment was introduced. It has, I believe, passed the house and is now being submitted to the Senate for consideration. It would do exactly the same thing as this legislation. Under the Farm Credit Act the rate of interest on the first \$20,000 for an unsupervised and \$27,500 for a supervised farm loan was set at 5 per cent and by one of the amendments that was recently by the House of Commons this was revoked and substituted

therefor language similar to what appears in here—that the rate is to be established by order in council.

Senator Benidickson: Until the last revision of the Bank Act, it is my understanding that commercial banks could not take mortgages with respect to land.

The Chairman: Except with the N.H.A.

Senator Benidickson: I believe they can now.

Mr. Hollbach: They did not have general authority to make mortgage loans.

Senator Benidickson: Do you contemplate that if borrowing is undertaken under these amendments for the purpose of land purchase the banks will as a matter of course take land mortgages as does the F.C.C.?

Mr. Hollbach: Yes, sir.

Senator Burchill: Is it anticipated in establishing the formula for the rate that any amount would be put in as a commission for the Government as a guarantee?

Mr. Hollbach: No, this would have to be authorized by legislation and that is not provided for in the legislation.

The Chairman: Are you ready for the question?

Senator Aseltine: I have another question. Still referring to this rate of interest, loans which were made for farm improvements on the one hand and loans can be made on the other hand to purchase small areas of real estate—farm land. Now will there be a rate for farm improvements and another rate for the farm purchase or the purchase of farm lands? It seems to me that the rate in connection with the purchase of farm lands might be different because there would be a longer time to pay it back than if it were just a straight improvement farm loan.

The Chairman: May I point out that all the amendments say that the rate shall be at the prescribed rate, and therefore I would presume that would mean any loan made under this amending bill before us would be at a rate to be prescribed by order in council.

Senator Aseltine: It doesn't say rates?

The Chairman: Rate.

Mr. Hollbach: I should say this, although no decision has been made on this, it may be

of interest to honourable senators to know that the Minister of Agriculture has indicated that this might be a possibility—that there might be one rate for land purchase loans with a maximum term to maturity of 15 years, and another rate for other purposes. But as I indicated earlier I am not aware of any final decision having been made on any one rate or the question of one or two rates.

Senator Aseltine: That is what I was trying to get at. I understand further in view of the fact that you have stated that the going rate of banks now for ordinary loans is $6\frac{3}{4}$ per cent, that the rate of interest under this act when it is set won't be less than that.

The Chairman: I don't think the witness said that.

Mr. Hollbach: This must be a misunderstanding. I wouldn't want to comment at all on what the likely level is going to be.

Senator Kinley: Under the statute and under the Small Loans Act the rate was 5 per cent, and the bank rate was 7 per cent, and that was a saving, and the guarantee was cut 2 per cent. Before the Bank Act the rate was 7 per cent.

The Chairman: I think it was 6 per cent.

Senator Kinley: Anyway, that means there was a one per cent difference between the two. But this whole thing is going to depend on the competition between the banks, and I think there is good competition now. I think that is all right, but we know that this 5 per cent placed a value on the guarantee.

The Chairman: Any other questions?

Senator Carter: I want to ask about the guarantee to the principal. In the case of recovery, if a lender lost, say, \$400,000 would he be covered for only 10 per cent of the total amount, or would he get 90 per cent of the first \$25,000, 50 per cent on the next \$125,000, and 10 per cent of the remainder, or would he be covered for the whole thing?

The Chairman: Dealing with \$450,000, it says "ten per cent of that part of the aggregate principal amount of the guaranteed farm improvement loans made by it during that period that exceeds two hundred and fifty thousand dollars." They do have an escalation or de-escalation depending how you look at it.

Senator Carier: I can understand the case of a small lender, but the big lender—does he get the same benefit that goes to the small lender?

The Chairman: He gets 90 per cent of the first \$125,000. In each case it says "of that part".

Senator Carier: And it applies to every part.

The Chairman: Are you ready for the question? Shall I report the bill without amendment?

Hon. Senators: Agreed.

Whereupon the committee concluded its consideration of the bill and proceeded to the next order of business.

The Chairman: The next bill we have to deal with is C-113, to amend the Prairie Grain Advance Payments Act. The same printing resolution is in effect.

The Chairman: Our witnesses are from the Department of Trade and Commerce: Mr. R. M. Esdale, Chief of the Grain Division; Mr. W. J. O'Connor, Assistant Chief, and Mr. N. O'Connell of the Grain Division.

Mr. Esdale, would you make a short statement as to the features of this bill that are being accomplished and then we will be open for questions.

Mr. R. M. Esdale, Chief, Grain Division, Department of Trade and Commerce: Mr. Chairman and honourable senators, the intent of this bill generally is to increase the cash resources of farmers in western Canada during times of elevator congestion when they are unable to deliver their grain. This is a general problem we know of. This is when the western farmer receives his income. Therefore, when there is congestion, he has problems in meeting his obligations. The intent of the act is to improve this position, and the amendments, stated very briefly, are that the maximum advance will be increased from \$3,000 to \$6,000.

Secondly, in establishing this, the arithmetic involved in establishing the rate per bushel has been increased in the case of wheat from 50 cents to \$1, in the case of oats from 20 cents to 40 cents, and in the case of barley from 35 cents to 70 cents.

Senator Hays: The rates have been doubled up?

Mr. Esdale: Yes, sir.

The Chairman: And the opposite part of that is the method of repayment?

Mr. Esdale: With respect to the repayment, there is no change in the act. That is to say when a farmer delivers his grain, half of the proceeds will be used to reimburse this loan. There is no change in that element of the act.

There are two other provisions in the amendments. One eliminates the unit quota in establishing the maximum advance that is possible, and permitting deliveries against the unit quota in that or subsequent years to be used to reimburse the loan, and finally provision is made for the farmers to take advantage of this act, when proclaimed, dating back to August 1. Those are the main elements of the new bill.

Possibly as a matter of interest I would indicate to you, from a historical point of view, that over the period of the last eleven years the charges to the Government for these interest rates have been \$7.5 million. The average yearly cost to the Government for these interest free advances have been \$683,000 during that period.

The other feature that is noteworthy in this eleven-year period of experience of this act is the high rate of repayment. In other words, the defaults have been relatively small. The Government's share of defaults over that eleven-year period have been \$43,000 and the share of the elevator companies, who share in this default to a minor degree, has been less than \$5,000 over the entire eleven-year period.

Senator Aseltine: Mr. Chairman, when this bill was in the Senate for second reading I spoke on it and stated that generally speaking I was very much in favour of it. The only objection I had was one on which I gave three examples. One example had to do with the farm of 500 specified acres, another farm with 800 specified acres and another farm with 1,000 specified acres. In each of those cases, with the 6 bushel quota for a specified acre, during the full crop year, it was impossible for the farmer to obtain those advances to pay back the amount of the advance. The balance would have to be carried over the next year, and so on from year to year. He would never be able to get out of debt.

The Chairman: Let us find out what the history is. What have you to say about that, Mr. Esdale?

Senator Aseltine: What I would like to see is a bigger quota, not only so that he could market more wheat but so that he could in each year pay back the advance which might have been obtained. This is a good act and is very popular, and the addition of doubling the advances that can be made is very satisfactory and it will be a great help. However, what we want to do is get bigger markets, sell more grain and have a heavier or bigger quota per specified acre, so that if it does happen that we must have advances from time to time they can be paid back during the top crop year and the farmer will be able to keep out of debt.

The Chairman: Have you digested all that, Mr. Esdale?

Mr. Esdale: Yes, Mr. Chairman.

The Chairman: Then, let us have the answer?

Mr. Esdale: Very briefly, I would in principle accept the arithmetic on the point of the farmer who has received a cash advance at a rate of a dollar based on this six bushel quota. The senator's arithmetic and points I would accept, that one could not repay it entirely in the identical crop year. Therefore, he would have to move into the second crop year. If that were the experience, ending the crop year, with a six bushel quota, I would agree he would move into the second crop year, to repay that cash advance. I think the only other comment I would express is that I would hope that the appearances of the six bushel quota would be not as often as the others, and historically the six has not occurred very often.

Senator Hays: What we have to do is get out and sell wheat.

The Chairman: Do you want to be commissioned as one of the persons to do that, senator?

Senator Paterson: Is not the solution to sell the wheat and if we do not sell it we just get in the mine deeper?

The Chairman: You have given the answer. One has to find the market.

Senator Paterson: We have to reduce it to where we are competitive. We have let the Americans sell under us.

The Chairman: Are you ready for the question? Shall I report the bill without amendment? It is agreed.

The Chairman: Honourable senators, we had a motion referred to the committee by Senator Carter in connection with the matter of statistics and how they are handled in the departments. The only way to deal with this, it seems to me, would be to set up a steering committee to meet and decide how we are going to go ahead with this, because it is a big question and the procedure should be analysed. My suggestion was that we should establish a steering committee and I would suggest for your consideration Senator Carter, Senator Molson, Senator Bourget, Senator Thorvaldson and Senator Walker as a committee of five. The chairman, of course, by virtue of being chairman, would be part of that steering committee.

Senator Kinley: What exactly is it that the committee will be considering?

The Chairman: It will be considering Senator Carter's resolution.

Senator Kinley: I was away, as you know.

The Chairman: Senator Carter's resolution had to do with a study and examination of our recording of statistics and what the procedures are and everything else. It may be quite a lengthy hearing that we will have to conduct, and, therefore, we should start out on the right basis and analyse the thing. These are only suggestions that I have made as to the steering committee. It is up to the committee to decide who will be on it.

Senator Smith (Queens-Shelburne): I so move, Mr. Chairman. It is a splendid idea and very practical.

The Chairman: Agreed?

Hon. Senators: Agreed.

The Chairman: This steering committee will then report back to the main committee. Thank you. That is all the business we have this morning.

The committee adjourned.



First Session—Twenty-eighth Parliament
1968

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable ALAN MACNAUGHTON, *Acting Chairman*

No. 6

Complete Proceedings on Bill C-110,
intituled:
"An Act to amend the Farm Credit Act".

WEDNESDAY, NOVEMBER 13th, 1968

WITNESS:

Farm Credit Corporation: G. Owen, Chairman.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Fergusson	McDonald
Aseltine	Gélinas	Molson
Beaubien (<i>Bedford</i>)	Gouin	O'Leary (<i>Carleton</i>)
Beaubien (<i>Provencher</i>)	Grosart	Paterson
Benidickson	Haig	Pearson
Blois	Hayden	Phillips (<i>Prince</i>)
Bourget	Hays	Rattenbury
Burchill	Inman	Roebuck
Carter	Irvine	Smith (<i>Queens-</i>
Choquette	Isnor	<i>Shelburne</i>)
Connolly (<i>Ottawa West</i>)	Kinley	Thorvaldson
Cook	Laird	Vaillancourt
Croll	Lang	Walker
Desruisseaux	Leonard	Welch
Dessureault	Macdonald (<i>Cape Breton</i>)	White
Everett	MacKenzie	Willis—(49)
Farris	Macnaughton	

Ex Officio members: Flynn and Martin.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, November 12th, 1968:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Everett, seconded by the Honourable Senator Sparrow for second reading of the Bill C-110, intituled:

"An Act to amend the Farm Credit Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Everett moved, seconded by the Honourable Senator Thompson, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, November 13th, 1968.

(6)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Aseltine, Beaubien, (*Bedford*), Benidickson, Blois, Burchill, Carter, Croll, Desruisseaux, Everett, Fergusson, Gelinas, Gouin, Haig, Isnor, Kinley, MacKenzie, Macnaughton, McDonald, Molson, Smith (*Queens-Shelburne*) and Thorvaldson. (21)

In attendance:

E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Upon Motion of the Honourable Senator Croll, the Honourable Senator Macnaughton was elected *Acting Chairman*.

Upon Motion it was *Resolved* to report recommending that 800 English and 300 French copies of these proceedings be printed.

Bill C-110, "An Act to amend the Farm Credit Act", was considered.

The following witness was heard:

Farm Credit Corporation:

G. Owen, Chairman.

Upon Motion it was *Resolved* to report the said Bill without amendment.

At 10.20 a.m. the Committee proceeded to the next order of business.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, November 13th, 1968.

The Standing Committee on Banking and Commerce to which was referred the Bill C-110, intituled: "An Act to amend the Farm Credit Act", has in obedience to the order of reference of November 12th, 1968, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

ALAN MACNAUGHTON,
Acting Chairman.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Wednesday, November 13, 1968.

The Standing Committee on Banking and Commerce, to which was referred Bill C-110, to amend the Farm Credit Act met this day at 9.30 a.m. to give consideration to the bill.

The Clerk of the Committee: Honourable senators, in the absence of the chairman is it your pleasure to elect an acting chairman?

Senator McDonald: I move that Senator Macnaughton be acting chairman.

The Clerk of the Committee: Is it agreed that Senator Macnaughton be acting chairman?

Hon. Senators: Agreed.

Senator Alan Macnaughton (*Acting Chairman*) in the Chair.

The Acting Chairman: We have before us today two bills. Do we have the usual motion for the printing of 800 copies in English and 300 copies in French of our proceedings?

Upon motion, it was *resolved* that a verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 copies in French be printed.

The Acting Chairman: This morning we are dealing with Bill C-110, the Farm Credit Act. We have as witnesses Mr. G. Owen, Chairman of the Farm Credit Corporation, Mr. W. H. Ozard, Vice-Chairman and General Manager, Operations, and Mr. R. McIntosh, Comptroller, Financial Services Branch.

Mr. Owen, have you an opening statement that would help us?

Mr. G. Owen, Chairman, Farm Credit Corporation: Mr. Chairman, honourable senators, I would like to make a few brief remarks as to the general intent of the bill. First, the most significant and immediate

provision is the increase in capital to the corporation. As of tomorrow we anticipate that all of the capital available to us to lend, in addition to that capital which we expect to collect from farmers this fall, will have been committed in new loans. Therefore, we require an increased capital authorization to the corporation.

The second significant amendment is the removal of statutory interest rates from the bill itself. As honourable senators will know, the act initially provided to borrowers a rate of interest fixed at 5 per cent. That is very much out of line with present-day interest rates and, in fact, is substantially below the cost to the corporation of borrowing.

The bill also provides a fluctuating rate on the upper limit or part of various loans. The present bill proposes to remove those fixed rates and to have the interest rate or rates prescribed from time to time by the Governor in Council.

I could mention many of the factors which economists would use to substantiate the argument that interest rates should be subsidized. On the other hand, I could also mention many of the other factors which economists would use to suggest that the interest rate should not be subsidized. I do suggest, however, that the setting of the interest rate by the Government becomes a matter of Government policy, and, while I would be happy to answer questions with respect to its implications, I feel that it is a matter of Government policy rather than a matter of direct...

Senator Aseltine: Well, this is Government money.

Mr. Owen: Yes, sir. I think the third and possibly the most controversial item, that which is subject to the most varying interpretation, is the increase of the maximum size of loans up to \$100,000.

Senator Aseltine: How long will that last?

Senator Croll: So long as the money lasts.

Senator Aseltine: How long will the money last?

Mr. Owen: We would suggest, sir, about two and a half years. A lot depends, of course, on the economic situation of agriculture.

Senator Aseltine: And the size of the loans made.

Mr. Owen: Well, the size of the loans, and this is what I wanted to emphasize at this stage—it does not increase the amount of money which any individual farmer may borrow. It means that if there are two farmers together in one farming business, then they can each borrow the same amount as they could if they were individuals farming separately. You will appreciate that very often two farmers may find it really to their economic advantage to operate a farm on a partnership basis. Now under previous legislation those two men might, as individual farmers, be eligible to borrow \$40,000 each under a standard mortgage loan. If they formed a partnership and shared machinery and jointly operated the land in the interests of efficiency and economy they could only become eligible for \$40,000 to the farming business.

The actual change here is relating the amount of the loan to the people involved in the farming business rather than increasing the amount any individual farmer may borrow. Incorporated in those are provisions that those farmers who wish to incorporate their farm business may also be able to borrow money. They have in the past been able to borrow money provided they were related to one another by birth, by marriage or by adoption. But sometimes farmers wish to join with their neighbours, maybe first in a partnership and later in an incorporated business. This bill makes provision for that sort of arrangement. It permits loans to this type of corporation only if the share distribution is that which will be defined by regulation and if the persons who are qualifying shareholders and who in effect are the borrowers have farming as their principal occupation. In other words, by the provisions of the bill itself the loans can only be made to incorporated farm businesses which are actually the incorporation of the farmers' business rather than investment of non-farmers in the farming sector.

The next provision is a significant one.

Senator Desruisseaux: Mr. Owen, on this point I would like to ask a question about co-operative farmers. Is it permissible to borrow to the full extent of each member?

Mr. Owen: You are speaking now of a co-operative association?

Senator Desruisseaux: Yes.

Mr. Owen: Provided each member individually owns his own land and then becomes a member of a co-operative farming association, he is eligible to borrow as an individual. If the co-operative association as such owns the land in its own right, provided it has three or more members occupied in farming, then it could borrow as a co-operative association up to \$100,000.

The Acting Chairman: May I suggest that we complete the statement and take the questioning afterwards? We might make faster progress.

Mr. Owen: The fourth item of importance is the extra assistance for establishing young farmers, particularly when they are being established in co-operation with or in conjunction with their parents. Under Part III of the present legislation under which we could lend up to 75 per cent of the value of land and chattels, we have up to now only been able to lend to an individual who is farming on his own. If he was farming in partnership or in some other arrangement with his father, he was ineligible under this particular condition. We have now made arrangements in this bill under which two farmers together can borrow under this part of the act where we lend on land and chattels and supervise the operation of the farm for a period of time. If one of the members of this farming business happens to be under 35 years of age, then despite the fact that his father may be over 45, which was the previous age limit under the supervised loans, they are still eligible. The purpose of this is to provide an opportunity for farmers whose sons wish to come into the business with them to get the capital needed to make the farm big enough to support two farming families so that the vocation will be reasonably attractive for his son.

There is a further provision that if one of the members of the farm business is under 35 years of age and can demonstrate to our satisfaction that his ability to manage a farm is measurably above that of the average, then we could lend up to 90 per cent of the value

of land and chattels. I would suggest that at the moment trends indicate that there isn't a need for introducing a great number of new people into farming. On the other hand, I think this particular clause is related to the opportunity for some of those who are highly qualified young men but who have very little in the way of equity required to get into the farming business today, to get into it, because we must recognize they are going to be leaders of the farm industry in the future.

The fifth item is that dealing with loans to Indians farming on reserves. Up to the moment we have not been able to lend to such persons. There was nothing in our act which said we could not, but if they cannot give us a mortgage against land, and since we are only permitted to lend when we have a first mortgage against land, we have been unable to lend to Indians farming on reserves. In this bill there is provision that we can enter into an agreement with the Minister of Indian Affairs and Northern Development to provide a form of guarantee in lieu of a mortgage against the land, and this will permit us to lend to Indians on reserves on the same basis we would lend to farmers in any other part of the country.

I think, honourable senators, that is the summation of the important aspects of the bill, and I would be happy to answer any questions as we go through it clause by clause, or in any other manner you wish.

Senator Croll: One thing relating to the mechanics of this; say two farmers enter into a partnership and one has 50 acres and the other has 25 acres and the division is on the basis of 50 and 25, how would they covenant to you? On what basis?

Mr. Owen: The covenant to us would be a joint mortgage, with the land of both partners mortgaged to the corporation, and the two borrowers would be jointly and severally liable for the repayment of that mortgage.

Senator Croll: Of the total sum?

Mr. Owen: Yes.

Senator McDonald: Where you have a father and son operation, can they borrow to the maximum of \$100,000?

Mr. Owen: If they borrow under Part III of the act—that is, under the supervised loans—and they are either both under 45 years of age or one of them is under 35 years of age,

then they can borrow up to \$100,000, providing, of course, they meet the other qualifications.

Senator Croll: Before you increased the amount, what percentage went into those larger loans—the maximum?

Mr. Owen: Are you referring to the last amendment?

Senator Croll: Yes.

Mr. Owen: About 30 per cent were above the previous maximum, but only 3 or 4 per cent would be up to our present maximum. These figures really are just approximate.

Senator Croll: When you say “up to the present maximum,” what do you mean?

Mr. Owen: Before this bill it was \$40,000 for a standard mortgage loan.

Senator Croll: And you say about 3 per cent?

Mr. Owen: Yes, about 3 per cent.

Senator Croll: And the others?

Mr. Owen: \$55,000 under supervised loans, again, I would think it would be not more than 3, 4, 5 per cent—something in that order. We are not changing the amount per individual, but we have been unable up to now to lend to two people farming together, to support two farm families.

Senator Croll: What is your middle figure? In what area is the greatest amount of loans made?

Mr. Owen: In the neighbourhood of \$20,000 to \$27,000.

Senator Croll: That is the bulk?

Mr. Owen: Yes, sir.

The Acting Chairman: Senator Aseltine?

Senator Aseltine: Mr. Chairman, I said pretty nearly everything I had to say in the Senate yesterday. However, I would like to say something now as well, if that is in order.

In the first place, I want to say that we have an office of the Farm Credit Corporation at Rosetown, Saskatchewan, which is very well run and is doing good work, giving good advice, and we are quite satisfied with the way everything is being carried on. But the difficulty that I see with the whole setup is something that I raised yesterday in the

Senate, and that is the effect these new gift tax regulations and the new estate tax regulations are going to have on what a farmer can accomplish in the way of bringing his children into the farm picture with him.

It seems to me that if one cannot make a gift before he dies or leave it to his son in his will without in each case paying, in the first case, a big gift tax or, in the second case, a big estate tax, there is no hope whatever for the young farmer to get into the farming business, even with the help of the Farm Credit Corporation.

I would like to ask the gentleman who is the head of the Farm Credit Corporation—is that your position?

Mr. Owen: Yes, sir.

Senator Aseltine: . . . to say something about that.

Mr. Owen: Well, sir, I must confess that we have been working so assiduously on our preparations to implement the provisions of this legislation that we have not yet made a full study of the implications of the proposed changes in the estate and gift tax provisions.

On the other hand, I think incorporated in this bill is a factor which will help to get around this particular problem and assist farmers somewhat to overcome it. I know it would have assisted them on the basis of the previous legislation with respect to gift and estate taxes. Very frequently the way a son starts farming is by buying land with a loan from the Corporation and security provided by his father. In this way the expansion of the farm business to make it large enough to include the son and provide a living for him and his family is effected by buying the land in the name of the son. There is another trend, towards the incorporation of farm businesses, and one of the problems of transferring farms from one generation to another in the past has been that the son had to buy the farm. More and more farmers are incorporating their farm businesses, and the son is gradually buying the farm by pieces in the form of shares rather than by pieces in the form of land. It is an easier way for the son to acquire an interest in his father's farm.

Senator Aseltine: There have been a great many sales from father to son, and the father has been able, under the old gift tax regulations, to cancel so much of that purchase price a year until the son becomes the owner. He cannot do that any more.

Mr. Owen: Yes, that is right. This does create a problem. I am suggesting that where they are very large they are likely to incorporate, and the purchase can be shares over a period of time.

Senator Aseltine: How much has been accomplished in the incorporation of farms? I only know of two or three farms in our whole area that are being run as corporate bodies.

Mr. Owen: As of about the fall of 1966 there were about 2,400 incorporated farm businesses in Canada.

Senator Aseltine: In the whole of Canada?

Mr. Owen: Yes, sir. Most of those are actually family farm incorporations. I would suggest this number has increased rapidly since that time, and I would suggest the trend in this direction will either be influenced upwards or downwards, depending on the changes made in the tax structure in the future, including the question of income, income tax, taxes on family units and various of the other matters that have been talked about.

I would suggest on the question of incorporation, particularly as the farms get larger, that the direction of this trend will depend largely upon the arrangements which are made with respect to income tax, gift tax and succession tax.

Senator Croll: Is not there a provision in the Ontario Gift Tax Act which permits this without being liable to it in lieu of death duties? You have not come across it?

Mr. Owen: I have come across a number of instances where farmers make gifts to their sons who are starting farming. I had assumed that this gift tax provision was a federal gift tax provision, and personally I am not aware of any different provision in Ontario, but it is certainly a thing our solicitors will be taking into account, but I have not been familiar with it.

Senator Everett: Mr. Owen, the Act provides that a farmer who has taken a loan can pay it off without notice of bonus, is not that correct?

Mr. Owen: That is correct, sir.

Senator Everett: Can he, in effect refinance a loan by that method? In other words, can he pay off a loan, and take out a new loan on the same security?

Mr. Owen: Yes, sir. About 40 per cent of the loans that we make now are to farmers who already have loans from us; who have borrowed money to expand. When we make a new loan we repay entirely the first loan, and set it up as one new and separate loan.

Senator Everett: That is more or less a consolidation of two loans?

Mr. Owen: That is right, sir.

Senator Everett: What I am concerned about here is the interest rate situation. We are now in a period of high interest rates. It is quite possible that because of monetary policy we will move to a period of low interest rates. Farmers who have entered into long-term arrangements now at 7.75 per cent or 8 per cent might find three or four years from now on a 30-year loan that they are borrowing at 2 per cent or 2.5 per cent over the rate being charged by the Corporation at that time. I think you have agreed that that is possible. It may not happen, but it is possible.

Mr. Owen: Yes. It has happened before.

Senator Everett: What we are trying to do here is put the farmer in much the same position as that of the large corporation. We are trying to supply him with long term money for expansion purposes at a reasonable rate. The Minister of Agriculture said that the rate would not be more than one per cent over the cost of borrowing to the Government. This is very attractive, but one very attractive part of a corporate loan is that there is usually a clause for repayment. You may be locked in for five or ten years, and you may have to pay a bonus, but in some way you can repay that loan and then re-finance at the lower interest rate. That is a protection that is always available to the corporate borrower. It is even available to the person who mortgages his house, I believe. What concerns me here is the question: Are farmers going to be locked into a rate that is applicable today, and have to pay that rate without being able to re-finance?

Senator Aseltine: For the full term?

Senator Everett: Yes, for the full term. I realize they may pay the loan off, but the scarcity of money to farmers that you have been talking about creates a situation where if the Corporation were not prepared to re-finance on the basis of interest rate reductions alone, there would be no other source from which the farmer could get money. In effect,

the farmer would be locked into that rate which he pays today, and which in a period of time may be two or three per cent more than the then going rate.

Mr. Owen: I can assure you, honourable senators, that this is a matter we are very aware of, and very concerned about. I think we must look at the \$1 billion that we have out now, and ask: What are we going to do for the individual farmer who has money he has borrowed at five per cent over the next 20 or 25 years, and who now wishes to get new funds. Can we consolidate the two into one loan?

I would believe, subject to the prescription of regulations, that the favourable rate which he presently enjoys would be transmitted to him in an adjustment to the rate on his future loan.

If interest rates go down, and we subsequently find ourselves lending at a rate lower than what he is—if the same principle applied, then his interest rate on his old funds at a higher level would be reflected in his new rate. His new rate would be higher than the general lending rate.

Now, in normal housing loans you must re-finance elsewhere if you want a reduction in rate, unless the lender happens to decide he wishes to go down in rate, and unless there is a clause in the mortgage permitting renegotiation at a particular time.

I would not be prepared to say what the Government might eventually do in this respect, sir, because you must remember that if we pass on the benefit of low interest on loans that are existing now when the farmer borrows new funds, and then pass on the benefit of low interest rates later when the farmer wishes to re-finance, the financial position of the corporation would be impossible, unless we can make arrangements with the Government to get the same consideration from them. I could not forecast what the final solution to this type of problem will be. I suggest though, with respect to the very problem you are referring to, that the fact that there is no other source from which the farmer can borrow to pay us off may be evidence in itself of a problem in respect of farm financing, and that the farmer really should not be locked into a situation where there is only one source of funds. If there were several sources of long term credit he could borrow from any one he wished, and pay us off—that is, if interest rates dropped.

There is nothing in our legislation to prohibit this. That is about as far as I could go.

I can say only this, that it is a problem of which we are acutely aware. We do not think it fair to say to those farmers who have the \$1 billion from us at the moment that they have to re-finance their loans at a higher rate. On the other hand, when you come to re-finance higher loans at a time when you are lending at a lower rate, then it will be a question of whether this benefit should be carried on.

Senator Everett: It satisfies me to know that the Corporation is aware of the problem, and proposes to keep its eye on it. I just want to make this one point, that mortgage companies face this particular problem in the normal course of their business. They also have to borrow on a long term basis, and they are stuck with the rate at which they borrow today, unless they can re-finance. But, they still face the problem of people paying off loans.

I would like to correct you on one point. You said that in respect of a home mortgage the mortgagee can pay off the mortgage, but he has to re-finance with another company. That is not entirely the case because while the company that holds the mortgage may be annoyed at having its mortgage paid off, it is still in a competitive business, and it quite often will accept a new mortgage at a lower rate in order to keep the business.

Mr. Owen: Yes, sir.

Senator Everett: So, it satisfies me to know that you are very much aware of the problem.

Mr. Owen: There is another aspect of that, I suggest. In their interest rate to begin with they have incorporated a sufficient margin to take care of that situation, and perhaps we could get around it in the same way.

The Acting Chairman: Were you basing your remarks partly on clause (82), Mr. Owen?

Mr. Owen: Yes, the amendment to section 19 of the act.

The Acting Chairman: Yes:

The Governor in Council may from time to time by regulation prescribe the rate or rates of interest to be paid in respect of any loan made under this Act.

Mr. Owen: Yes, sir.

The Acting Chairman: Senator Carter?

Senator Carter: Mr. Chairman, I think the witness earlier told Senator Croll that the bulk of the loans were within the range of \$20,000 to \$25,000, and well below the maximum. I gathered from what he said to Senator Everett that included in that number would be new loans and additional loans to people who already had loans.

Mr. Owen: Yes, sir.

Senator Carter: I was not aware until your reply to Senator Everett that there was this provision. I am wondering if you have any breakdown, but what I am mostly interested in is the reason for the loans being below the maximum. Was it because there was a request for a loan below the maximum, or was it because there were limiting factors which would not permit the amount of the request to be met?

Mr. Owen: Your first question relates to the fact that some of these are second loans. I was really saying that between \$20,000 and \$27,000 our average loan is about \$23,000; the bulk of them are around there. That sum includes the amount used to pay off old loans they have. Generally speaking, the reason many of these are below the maximum is related directly to the size of farm business the man has and the amount he can borrow and repay. In some instances the amount is limited by the security he can offer; it may be limited by his repayment ability, or it may be limited by the amount of long-term capital he actually needs. Many farmers could borrow more, they do not borrow everything they could borrow, so the relationship is really more to the size of the farm business. When I refer to the size of the farm business I am not talking about acres but about income.

Senator Carter: Then the average size of the loan is no reflection of the size of the loan requested, but is a reflection of what the corporation feels can be safely loaned to the farmer in view of the considerations you have just mentioned.

Mr. Owen: There are many cases in which we could lend much more but the farmer does not in fact want more. There are many instances in which we ask the farmer to apply for a larger loan than that for which he originally applied because we feel that in order to be able to pay back any loan he must make a greater expansion in his farm business. In that way in some instances we encourage them to apply for more. Some of them do not need much more, so although

they could borrow much more they do not actually obtain it.

Senator Fergusson: Could you tell us the geographical location of the incorporated farms? I really want to know whether there are any in the Maritimes.

Mr. Owen: To my knowledge we have come across very few; we have found some but very few. The great majority would be in Ontario, Saskatchewan, Alberta and British Columbia.

Senator Aseltine: Could you give us some information about the disappearance of the small farms?

Mr. Owen: I like to measure farms by size of income. I am always happy to see the incomes of farmers going up so that the number of small farmers measured by size of income is going down. In fact, the statistics indicate that the number of commercial farms in Canada—that is the number with gross sales of more than \$2,500 per year—has increased steadily since 1951. We must acknowledge that \$2,500 is a very low gross income upon which to live today, so although the statistics indicate a great decrease in the number of small farms it must be recognized that the majority of farms that are disappearing are in fact not farms but rural residences from which people make some living and earn very much more outside it.

Senator Aseltine: And the farm population is decreasing accordingly?

Mr. Owen: Yes, sir, those we classify as farm population. We may question how they should have been classified originally. If we talk about small farms in terms of income—which is the only way one can measure a farm, because acreage does not mean anything in view of the wide distribution in acreage requirements—surely that we are looking for is an increase in the income, an increase in the higher level, which is coming about, and a decrease in the number with incomes below that which would give anybody a reasonable standard of living.

Senator Aseltine: The small family farm in the Prairie provinces is pretty well on the way out, because they cannot make that size of income with a small farm.

Mr. Owen: That is right, sir.

Senator Aseltine: They are selling to the bigger owners, and that is one reason why the price of land is going up and up and up.

Mr. Owen: The only thing I can say to that on behalf of the corporation is that we do not lend to the larger farm operators. We have an upper limit. We will not lend to the larger ones, and we suggest they must seek their capital elsewhere. We concentrate our lending on assisting those to enlarge who are able to get up to what will be a viable farm business rather than lending to those who are already well established. I agree with you, your premise is absolutely correct, that is what is happening.

Senator Aseltine: Your corporation is responsible for it.

Senator McDonald: What are the maximum farm assets over which you would not give a loan?

Mr. Owen: We do not establish any specific figure because some kinds of enterprises are capital intensive and others are labour intensive. Some farmers need more income than others. We ask ourselves: "Has this particular farmer as his farm operates got a reasonable income for himself and his family? Is he reasonably well financed in the business?" If he is we say we will not lend him money to expand. Since the maximum loan to an individual is \$55,000 and this represents about \$80,000 to \$90,000 worth of land, we feel we cannot very well decline below that level, but if an individual farmer's net worth is in excess of \$75,000 we take a fairly close look at it before agreeing to lend him money.

Senator McDonald: If the farmer's net worth is in excess of \$75,000 and he is working in partnership or some family arrangement with his son, would his son be given a loan?

Mr. Owen: Yes if the loan is going to increase the land owned by the son, in other words to increase the son's proportion. If the father is wealthy we would not lend him money to assist him to expand himself, but we would allow him to put up security to assist his son to borrow.

Senator Croll: What percentage of farm loans do you make in Canada?

Mr. Owen: Of total borrowing by farmers, of about \$2 billion in 1967 we loaned about \$260 million, or about 12 per cent. That is of all kinds of loans. However, on long-term mortgage loans we loaned something over 60 per cent.

Senator Croll: To farmers?

Mr. Owen: Long-term loans to farmers.

Senator Croll: What do you mean by "long-term"?

Mr. Owen: Something secured by real estate for a term of more than 10 years.

Senator Croll: I am not sure that I caught what you said. I understood you to say that from 1952—perhaps that date is not right—farm income has continued to go up.

Mr. Owen: Not directly. I said that the number of farmers with annual sales in excess of \$2,500 had gone up steadily since 1951.

Senator Croll: You took \$2,500 as what you thought was the minimum?

Mr. Owen: We took \$2,500 as the minimum qualification for a commercial farm measured by the Dominion Bureau of Statistics.

Senator Croll: There are no figures to indicate what happened below that figure.

Mr. Owen: In some cases they have gone down drastically below that figure.

Senator Croll: Above that figure you say there has been a steady increase in income.

Mr. Owen: Yes.

Senator McDonald: But, the numbers under 2,500 have gone down drastically.

Mr. Owen: I am really referring to the number of farms in these particular economic classifications.

Senator Croll: You have talked about income. The basis is income and to get back again you said there had been a steady increase of the income.

Mr. Owen: In the number of farms, sir. To quote the precise figures, in 1951 there were commercial farms, that is, those with sales of 2,500 or over, 235,000 in Canada. In 1961, 259,000 and in 1966 about 277,000. The farms with sales of less than 2,500; in 1951 there were 387,000. In 1961, 221,000 and in 1966, 153,000.

The Acting Chairman: Honourable senators, is it your desire to take this bill clause by clause in view of the extended discussion in both houses?

Senator Croll: I will move the bill.

Senator Isnor: I was interested in the statement made by the witness with regard to the Indians. You have made no loans to Indians; is that correct?

Mr. Owen: No loans to Indians farming on reserves, sir.

Senator Isnor: Have you made any loans to Indians?

Mr. Owen: Off reserves?

Senator Isnor: Yes.

Mr. Owen: I expect we have, but I could not be sure. We never ask the racial origin of anyone farming. If he has land and can mortgage it, we do not make any records of race. I could not say; I suspect we have.

Senator Isnor: Am I correct in saying that you stated that you were unable to make the loans to Indians because they are not in a position to mortgage their lands?

Mr. Owen: That is right.

Senator Isnor: Do you have more than one kind of loan? In other words, do you always combine the land and chattels?

Mr. Owen: We make the loan on the land first, sir. If more capital is needed then we can loan on the basis of land, and we take security on chattels. We never have a loan under the Farm Credit Act on the chattels only.

Senator Isnor: I want to get over that Indian situation by taking mortgages on chattels.

Mr. Owen: Mortgages on chattels on Indian reserves can only be valid if taken before the chattels go on the reserves. This is a possibility under another program, the syndicate legislation. This is also done through chartered banks under the Farm Improvement Loans Act.

Senator Burchill: Senator Aseltine was talking about the value of land. I was rather interested in that. How is that value determined? In a matter of purchase, I can see a purchase between an individual and a farmer and a corporation. Is there any assessment or evaluation on top of that?

Mr. Owen: Yes, sir, the purchase price between two private individuals is not really a thing in which we get ourselves involved excepting that if we happen to be advising an applicant who is going to buy land, we may

suggest to him that he look elsewhere to see if he can get the land at a better price. For our own purposes, we evaluate land based on its agricultural productive value. This is a measure of the income which we expect that farm to be able to produce and how much you can afford to pay for the farm, and on the basis of income expectations expect to get a reasonable return for your labour, management and capital investment. This at the moment, in some parts of the country, is significantly below the actual value at which land is changing hands.

Senator Burchill: You have officials who estimate the return on the investments?

Mr. Owen: Yes. I might mention that for the half section of land to add to that of a man who has already three-quarters, the

value to him in the form of income may be substantially higher than it would be for his home farm, because it gives him an opportunity to spread out his overhead costs, his machinery costs and his other costs on that larger unit of production. This is one of the economic reasons, aside from our credit, why farmers are willing to pay high values, high prices, for areas of land to add to an existing farm. In economic terms, the marginal utility of that land to him is very high.

The Acting Chairman: It has been proposed that I report the bill without amendment. Shall I report the bill without amendment?

Hon. Senators: Agreed.

At 10.20 a.m. the committee concluded its consideration of the bill and proceeded to the next order of business.



Government
Publications

First Session—Twenty-eighth Parliament
1968

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable ALAN MACNAUGHTON, *Acting Chairman*

No. 7

Complete Proceedings on Bill S-15,
intituled:

“An Act to amend the Food and Drugs Act and the Narcotic Control Act
and to make a consequential amendment to the Criminal Code”.

WEDNESDAY, NOVEMBER 13th, 1968

WITNESSES:

Department of National Health and Welfare: R. E. Curran, General
Counsel. Dr. R. A. Chapman, Director General, Food and Drug Direc-
torate. M. G. Allmark, Assistant Director General (Drugs), Food and
Drug Directorate.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Fergusson	McDonald
Aseltine	Gélinas	Molson
Beaubien (<i>Bedford</i>)	Gouin	O'Leary (<i>Carleton</i>)
Beaubien (<i>Provencher</i>)	Grosart	Paterson
Benidickson	Haig	Pearson
Blois	Hayden	Phillips (<i>Prince</i>)
Bourget	Hays	Rattenbury
Burchill	Inman	Roebuck
Carter	Irvine	Smith (<i>Queens-</i>
Choquette	Isnor	<i>Shelburne</i>)
Connolly (<i>Ottawa West</i>)	Kinley	Thorvaldson
Cook	Laird	Vaillancourt
Croll	Lang	Walker
Desruisseaux	Leonard	Welch
Dessureault	Macdonald (<i>Cape Breton</i>)	White
Everett	MacKenzie	Willis-(49)
Farris	Macnaughton	

Ex Officio members: Flynn and Martin.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, November 12th, 1968:

“With leave of the Senate,

The Honourable Senator Hollett resumed the debate on the motion of the Honourable Senator McGrand, seconded by the Honourable Senator Basha that the Bill S-15, intituled: “An Act to amend the Food and Drugs Act and the Narcotic Control Act and to make a consequential amendment to the Criminal Code”, be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative

The Bill was then read the second time.

The Honourable Senator McGrand moved, seconded by the Honourable Senator Carter, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.”

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

Wednesday, November 13th, 1968.

(7)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.20 a.m.

Present: The Honourable Senators Macnaughton (*Acting Chairman*), Aseltine, Beaubien (*Bedford*), Benidickson, Blois, Burchill, Carter, Croll, Desruisseaux, Everett, Fergusson, Gelinas, Gouin, Haig, Isnor, Kinley, MacKenzie, McDonald, Molson, Smith (*Queens-Shelburne*) and Thorvaldson—(21).

In attendance:

E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Upon Motion it was *Resolved* to report recommending that 800 English and 300 French copies of these proceedings be printed.

Bill S-15, "An Act to amend the Food and Drugs Act and the Narcotic Control Act and to make a consequential amendment to the Criminal Code" was considered.

The following witnesses were heard:

Department of National Health and Welfare:

R. E. Curran, General Counsel;

Dr. R. A. Chapman, Director General, Food and Drug Directorate;

M. G. Allmark, Assistant Director General (Drugs), Food and Drug Directorate.

Upon Motion it was *Resolved* to report the said Bill without amendment.

At 10.55 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

Wednesday, November 13th, 1968.

The Standing Committee on Banking and Commerce to which was referred the Bill S -15, intituled: "An Act to amend the Food and Drugs Act and the Narcotic Control Act and to make a consequential amendment to the Criminal Code", has in obedience to the order of reference of November 12th, 1968, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

ALAN MACNAUGHTON,
Acting Chairman.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Wednesday, November 13, 1968.

The Standing Committee on Banking and Commerce, to which was referred Bill S-15, to amend the Food and Drugs Act and the Narcotic Control Act and to make a consequential amendment to the Criminal Code met this day at 10.20 a.m. to give consideration to the bill.

Senator Alan Macnaughton (*Acting Chairman*) in the Chair.

The Acting Chairman: We have before us Bill S-15. Do we have the usual motion to print?

Upon motion, it was *resolved* that a verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 in French be printed.

The Acting Chairman: We have with us today Dr. R. A. Chapman, Director General, Food and Drug Directorate of the Department of National Health and Welfare; Mr. M. G. Allmark, Assistant Director General (Drugs), Department of National Health and Welfare, and Mr. R. E. Curran, General Counsel of the Department of National Health and Welfare.

Senator MacKenzie: Mr. Chairman, may I ask one question? Is this the same bill, to all intents and purposes, as was before us a year ago?

The Acting Chairman: That is right, Senator MacKenzie. Mr. Curran, I believe you have a general statement to put before the committee.

MR. R. E. CURRAN, GENERAL COUNSEL, DEPARTMENT OF NATIONAL HEALTH AND WELFARE: Mr. Chairman, honourable senators, this bill is a consolidation of Bills S-21 and S-22 which were before the Senate roughly a year ago—with one exception, in that this bill does not contain the por-

tion of Bill S-22 which dealt with hazardous substances. That has been taken out and I understand it will form a subject of a separate bill.

This bill, in effect, only amends the Food and Drugs Act and the Narcotic Control Act, and makes consequential amendments to the Criminal Code.

It does really three things. First, it implements a recommendation of the Standing Committee on Health and Welfare of the House of Commons, which went into the question of contraception as was covered by the Criminal Code. That committee recommended that the prohibition on the sale and advertising of contraceptive devices be taken out of the Criminal Code and transferred to the Food and Drugs Act. This bill accordingly defines a contraceptive device and also enlarges the definitions of "device" to include a number of things which we thought were covered but where there was some argument as to whether, strictly speaking, they were covered within the language. Therefore, contraceptive devices will now form part of the Food and Drugs Act.

The second change is in the regulation-making section, in regard to the control of the advertising and sale of contraceptive devices to the general public.

Consequential upon that, the words pertaining to contraception will be taken out of Section 150 of the Criminal Code, so that this will completely remove the sale or advertising of contraceptive devices, as contained in the Criminal Code, and will transfer the legal sale of contraceptive devices to the Food and Drugs Act, with the same authority to make regulations with respect to advertising to the general public.

Honourable senators, on that point I should tell you that the intent at the moment is to permit of advertising to the general public, under regulation, of course, by responsible agencies concerned with

family planning and the dissemination of birth control information, but not to permit of commercial advertising to the general public of contraceptive devices.

The regulations, I can tell you, have been drafted and they will follow that pattern for the time being. Whether any change will later be made in the type of regulation I cannot predict; but we have had no real experience in Canada, because of the prohibition in the Criminal Code, as to whether commercial advertising or otherwise can creep in.

At the moment we are proceeding on the basis that we will limit the advertising to responsible agencies connected with family planning, but advertising to the general public of a commercial nature of contraceptives as such will not, for the time being, be permitted.

Senator Smith (Queen's-Shelburne): Mr. Chairman, may I ask, for clarification, will that description which has been mentioned apply also to advertising in trade journals and various publications available to druggists, and so on?

Mr. Curran: No, senator. It will not apply. This prohibition relates to advertising to the general public. We do not consider advertising in the Canadian *Medical Journal* to be advertising to the general public, or if it is directed to one of the professions, or to the Canadian *Nurses Journal*. It might possibly be that advertising would appear in a professional publication, but not in trade journals. We are talking about newspapers, magazines, radio and television advertising.

Honourable senators, I am not taking these points in the order in which they appear in the bill but rather in the order of their importance or of their subject matter. The next point is contained in section 10, which really is a reproduction of what was contained in Bill S-21 when it was previously before the committee, with one addition. This deals with restrictive drugs. It sets up a new Part in the Food and Drugs Act, entitled Restrictive Drugs. This is contained on page 5 of the bill.

The bill which was before this committee a year ago dealt only with lysergic acid diethylamide, which is generally known as LSD.

Since the committee considered that bill we have also added three other drugs to the prohibited list in the Food and Drugs Act, and these are now transferred to this bill. These drugs are found in Schedule

J, which is shown on page 8 of the bill. In addition to LSD, you will see DET, DMT and STP.

I shall not attempt to pronounce the chemical names, but I would tell you that these are very dangerous hallucinogenic drugs. They have made some appearance in the illicit market with young people. A short time ago we added them to Schedule H of the Food and Drugs Act, which is the prohibitive section. For tidying up purposes, we are now bringing them under this bill.

Senator MacKenzie: Marijuana is not scheduled?

Mr. Curran: Marijuana is in the Narcotic Drugs Act. Marijuana is not dealt with in this bill.

Senator Croll: Are these drugs easily obtainable?

Mr. Curran: That is a technical question. The legal use of these drugs is rather limited. They are highly experimental at the present time. But we have some evidence of the illicit distribution of these drugs.

Senator Croll: Could a doctor prescribe some of these for me?

Mr. Curran: The answer is no. They are not available to the medical profession.

Senator Croll: You say they are not available. Who uses them, then?

DR. R. A. CHAPMAN, DIRECTOR GENERAL, FOOD AND DRUG DIRECTORATE, DEPARTMENT OF NATIONAL HEALTH AND WELFARE: LSD is the only one available in Canada for clinical testing at the present time. LSD is available to institutions approved by the Minister of National Health and Welfare for clinical testing to determine safety and efficacy. Lysergic acid diethylamide or any salt of it, in other words the LSD drugs, are made available but the others are not. There has been no request for institutions to use these other drugs.

Senator Croll: What are we getting into them for, if we will never use them?

Dr. Chapman: It is to control the illicit traffic in these drugs.

Senator Croll: How does the trafficker get any of these drugs? How would a man who is trafficking in

these drugs get any of them in order to carry on his business? Where would he get them?

Dr. Chapman: So far as we know these illicit drugs found on the Canadian market are brought into Canada from other countries, chiefly from the United States.

Senator Croll: But they are unknown in this country otherwise.

Dr. Chapman: So far as the manufacture of them in this country is concerned. However, I might add that these are not that difficult to make. They cannot be made, however, by a high school student with a toy chemical set, as has been suggested.

Senator Croll: Well, don't start explaining how to make them. Forget about it.

Dr. Chapman: It takes a competent chemist in a reasonably well-equipped laboratory, and although they do appear in the United States we are not aware of any specific manufacture in Canada.

Senator McDonald: With respect to DET, DMT and STP, do you know if they are used for clinical purposes in the United States, or is the production and sale of these drugs illicit in the United States as well as in Canada?

Dr. Chapman: So far as I am aware the production and sale of these other drugs is also illicit.

Senator McDonald: So far as you are aware there is no clinical use of them in the United States?

Dr. Chapman: I am not aware of any.

Senator Croll: How dangerous is their use?

Dr. Chapman: Extremely dangerous.

Senator Croll: And yet there is some use of these drugs by people who do not understand their implications.

Dr. Chapman: Oh, no. The institutions that are approved by the Minister of National Health and Welfare are thoroughly investigated and are under the control of very competent medical practitioners. Moreover, the individuals to whom the drug is given are under medical supervision throughout the treatment.

Senator Croll: How does it start? Where does anyone get a knowledge about these drugs and their use? Is it the narcotic people who do this? Are they the ones?

Mr. Curran: LSD is separate.

Senator Croll: I know about LSD.

Dr. Chapman: The drug that is listed here as STP appeared in the United States a little over a year ago. It showed up because it was found that several people had suffered from hallucinations after taking a drug, but when the antidote for LSD, that is, chlorpromazine, was administered, rather than having the usual salutary effect, it appeared on the contrary to enhance the effect of the drug, and upon further analysis it was found that it was a different compound entirely. It was not LSD but was STP that these individuals had taken. STP is much more potent than LSD.

Senator Croll: You say that this is a precautionary measure and you want to be ahead of the game for a change, instead of behind the game.

Mr. Curran: That is right.

The Acting Chairman: It is to give you control over unethical suppliers and purveyors.

Mr. Curran: This will also make unauthorized possession an offence, which at the present time it is not. The police have been hampered in their enforcement activities very frequently when they have come across one of these drugs. For example, in one of the Maritime areas—not yours, Senator Fergusson—the police found in a very small community some young people who had quantities of STP which they had illegally purchased. We could not lay a charge against anyone for the possession of STP—which, incidentally, Professor Leary, of whom you have no doubt heard, describes as “Serenity, Tranquility and Peace”. Those are the words for which STP is supposed to stand.

Senator Croll: What form does it take? Is it a pill or a liquid?

Mr. Curran: It is a powder.

Senator Croll: Much of it can come in, then.

Mr. Curran: It would be possible, despite the best enforcement efforts. It is impossible to close the

border to keep everything out. This measure will act as an additional deterrent whereby we can deal with unauthorized possession. At the present time we cannot.

Senator Croll: Unauthorized possession with knowledge?

Mr. Curran: Oh, yes, you would have to have knowledge of the thing possessed. In the opinion of the RCMP this bill will be a very helpful aid to them. It follows more closely the pattern of the Narcotic Control Act, with some differences in penalties. But the subject matter of the legislation is roughly the same as that in the Narcotic Control provision.

Senator Carter: Mr. Chairman, in Part IV of the bill, "possession" is said to mean possession as defined in the Criminal Code. I take it it defines possession as "possession for the purpose of trafficking". Is that correct?

Mr. Curran: No. They simply have a broad definition of possession in the Criminal Code indicating that in order to be guilty of possession you have to have either the physical possession of the thing or the physical control of the possession—with, of course, knowledge of what you have. This was put in some years ago in the Narcotic Control Act to get round some legal objections that had been raised suggesting that the word "possession" may have had a different meaning. So we adopted for our standard the definition of possession as is understood in the Criminal Code, and that is why it is incorporated here. It serves to give uniformity to all of the legislation so far as the word "possession" is concerned.

The Acting Chairman: Senator Carter, look at subparagraph (d), "traffic".

Senator Carter: Oh, yes. You have had this power to control LSD for several months now, have you not?

Mr. Curran: No. How we have controlled LSD is a highly different matter. In 1962, at the time of the thalidomide tragedy, we set up a schedule in the Food and Drugs Act of what were called prohibited drugs. Thalidomide was one and LSD was the other. Then, in order to permit some clinical evaluation, we exempted LSD in a limited way. We allowed small sales of LSD to approved institutions—institutions approved by the minister for evaluation of efficacy

and safety. There are some 14 such institutions in Canada doing a very limited amount of experimentation with LSD.

That is how LSD is being used for clinical evaluation. But it is not commercially available. There is only one supplier in Canada. That supplier is Connaught Laboratories. They will sell to only an approved institution under the conditions that Dr. Chapman mentioned, that is, for closely supervised use in the institution. I might say that the other drugs will follow the same pattern. If there is any need for clinical evaluation of these drugs, the regulations will permit the same type of clinical evaluation. That is the scheme.

Senator Kinley: One of the principal things is this matter of possession. But if you get some of these drugs under a doctor's prescription and you store it yourself and you are caught with it, you have to prove that you do not have it for traffic. If a charge is brought against a man he has to convince a court that he does not have it for trafficking, and that seems to go against the presumption that a man is innocent until he is proven guilty.

Mr. Curran: But if we find a man in possession, we still have to prove that he was guilty of unauthorized possession. He does not have to prove his innocence. We have to prove he was not a person entitled by law to be in possession.

Senator Kinley: But if he gets it by doctor's prescription.

Mr. Curran: But in the case of these drugs, he cannot get it by doctor's prescription. There is no drugstore in Canada that may stock these drugs, and no doctor can get them. I am talking about LSD, DET, DMT and STP.

Senator Haig: How do you put some of these drugs under the Food and Drugs Act rather than under the Narcotic Control Act?

Mr. Curran: These drugs, because of their medical properties, are not classed as narcotic drugs. The drugs that come under the Narcotic Control Act have been classified by the expert committee of the World Health Organization as being narcotic drugs. In this way we have preserved the purity of the Narcotic Control Act by following the recommendations of the expert committee of the World Health Organization. In this instance we have come across a new

category of drug like LSD. At first we thought that such drugs should come under the Narcotic Control Act, but after careful examination we decided that, since they were not narcotic drugs, it opened up a whole different area. As LSD was the first of these drugs, we felt we could expect other similar drugs to appear and that therefore we should open up a special part of the Food and Drugs Act so as to be ahead of the game, so to speak, and we would be in a legal position to deal with drugs that might appear on the market and which would not have the characteristics of narcotic drugs.

This is why we have created a new classified type of restricted drug which is quite different from narcotic drugs. Narcotic drugs, as you know, are drugs which presumably have a legal use under strict control. But these drugs mentioned here have no medical use as yet and they are still in a highly experimental stage and we felt they should be controlled by legislation.

Senator Hollett: Mr. Chairman, I wanted to find out something about subsection (2) of section 150 of the Criminal Code and why the amendment is proposed to cut out the words "preventing conception". What is the idea behind it?

Mr. Curran: As you know, under the Criminal Code it stated, and the section is repeated on the last page of the bill—

(2) Every one commits an offence who knowingly, without lawful justification or excuse,

.....

.....

(c) offers to sell, advertises, publishes an advertisement of, or has for sale or disposal any means, instructions, medicine, drug or article intended or represented as a method of preventing conception or...

That was considered by the Standing Committee on Health and Welfare of the Commons two years ago. They heard a number of witnesses and had briefs from agencies to the effect that this was a dead letter in our law because many contraceptive devices were being manufactured and sold, and the law to that extent was being ignored. They recommended that those words should be taken out of the Criminal Code and that the control of contraceptive devices, that is the sale of contraceptive devices, should be transferred to the Food and Drugs Act because these are articles which normally are under

medical supervision. They thought it was appropriate that the Food and Drugs Act which was concerned with that subject should be used rather than the Criminal Code, which prohibited the sale completely when everybody knew that many of these things are being sold in drug stores and under medical prescription. In order to bring some sense into the thing the Committee recommended that these should be taken out of the Criminal Code and the subject matter transferred to the Food and Drugs Act. That is the purpose of this amendment.

Senator Hollett: But you say they knew that these were being sold, and I want to ask why the people selling them were not prosecuted for selling them under section 150 of the Criminal Code.

Mr. Curran: Well, there was a provision in section 150 whereby it was a good defence to show that the public good was being served. You may recall many years ago in Eastview the famous case of *Rex v. Palmer* where a nurse employed by a birth control agency was charged under section 150. Her defence was that in disseminating this type of information and providing the means for birth control she was serving the public good, and the court upheld this view and it created a lot of confusion as to what the offence really meant. As a result the matter became a dead letter.

The attorneys general of the provinces responsible for enforcing the Criminal Code were not laying many charges, and this came to a head two years ago when the special committee heard representations in this whole area and recommended that this be brought under the proper form of control under the Food and Drugs Act where this and other matters continue to be dealt with.

Senator Hollett: Because they believed in the public good?

Mr. Curran: Yes.

Senator Hollett: The committee believed it was in the public good to advertise and sell them?

Mr. Curran: Well, not advertising.

Senator Hollett: I know all about that, but they are going to set up a committee to do it.

Mr. Curran: No, there will be special regulations dealing with advertising to the general public of contraceptive devices which have been legally sold for a

long time under medical prescription and which will continue to be sold.

Senator Hollett: Who will draw up the regulations? *gla*

Mr. Curran: The governor in council.

Senator Hollett: The Government is going to do this?

Mr. Curran: Yes.

Senator Hollett: The Government will make, what shall I call it, a "red light district" out of Canada, and that is putting it mildly.

Senator Smith (Queens-Shelburne): I think if Senator Hollett had heard what the committee heard half an hour ago he would realize that a lot of this will be taken care of.

Mr. Curran: The purpose of the regulation is to prohibit the commercial advertising of contraceptive devices to the general public. The regulations will authorize advertising to the general public by responsible family planning organizations or organizations concerned with the dissemination of birth control information in the public interest.

These are reputable, legitimate organizations. However, it will not permit of any commercial advertising of these devices to the general public, so you will not find in newspapers or magazines, or on radio or television, any advertisements with respect to contraceptive devices. This will be confined only to advertisements by these agencies. It will not prohibit advertising in professional magazines to doctors and nurses, and people of that kind. So, there will be no commercial advertising of any kind to the public, and the control of these articles will be under the authority of the Food and Drugs Act, which is where the committee thought it logically belonged.

Senator Hollett: Is not this contrary to all the moral rules and laws laid down by all churches—the Christian churches anyway? We have no Christian church that would advocate it.

Mr. Curran: I do not want to get into a liturgical discussion on this area, but there has been a great deal in the press recently on the question of "the pill," and I think many of the churches advocate the use of contraception to control the size of families for the economic welfare of those particular families.

As I say, I think this is a very vexed issue to get into, but I can only interpret what is the intent of the Government in transferring this to the Food and Drugs Act. I would say that probably it is a moral issue between people as to whether they want to use them. There is no compulsion here on any person to use them. This is only to make it possible for people to do so without thereby committing a criminal offence, as they might have done before.

Senator Hollett: As they were doing, and which the Government has not thought fit to prosecute. This is what worries me.

Senator McDonald: Could I return to LSD for a moment? About a year ago we had a committee meeting which you attended, doctor, similar to this one, discussing LSD, and at that time we had some professional advice and some not so professional advice, in my opinion. I wanted to ask you if there had been any experimental work, or if the results of such experimental work as has been carried on—I think you said by 14 institutions designated by the minister—indicate that LSD has a useful purpose in society.

Mr. Curran: Dr. Chapman could answer that. I think the answer in brief is that the opinion is far from unanimous, that more people are apprehensive of LSD, even from a medical point of view. Dr. Chapman will probably have more detailed information.

Dr. Chapman: I might point out that I think I used the figure of five institutions where LSD was under active investigation at the present time. Mr. Curran referred to the number of institutions that over the past few years have been approved. That is the reason for the difference between the 14 and five.

There has been a great deal of work done on LSD, but despite this research there has been a notable lack of scientifically controlled research on the therapeutic uses of LSD.

The principal areas in which LSD is reported to have been useful are: chronic alcoholism, but the research tends to lack objectivity and any long-term follow-up; the therapy of psychoneurosis, and it is very difficult in this area to assess how much of the reported improvement was due to the drug and how much to the therapist actually administering the drug and treating the patients. The third area where it has been suggested as being useful is in the psychiatric

treatment of pain in terminal cancer patients. There has been a limited number of cases reported in this area. Those are the areas where it has been suggested it might be useful, but it really has not been confirmed as an effective therapeutic agent.

Senator McDonald: Thank you.

The Acting Chairman: Honourable senators, is there any desire to take the bill clause by clause?

Senator Burchill: I was wondering about one point during the discussion with Senator Hollett. You indicated there was difficulty in securing prosecutions in the case of illicit or illegal advertising under the Criminal Code. How are we going to get around that now you have put them in this act? How are prosecutions going to be effected now? Will you not be up against the same difficulty?

Mr. Curran: Except that by transferring them to this act they become legal devices which can be legally sold under whatever conditions of sale are prescribed. Some of these things will be sold only under medical supervision. But, for example, condoms, which have been in wide circulation for a great many years, have got around the law because the package usually bore the inscription, "For the prevention of disease only," when everybody knew they were being sold essentially for preventing conception. So, this was just an open device to evade the law by putting on the label, "For the prevention of disease only," and they have been widely sold and they will continue to be sold, either for the prevention of disease, if they want, or for the prevention of conception. They can now be sold as contraceptive devices legally, through various outlets, drug stores, and under whatever conditions of sale may be prescribed.

Senator Hollett: By a Government agency, is that right?

Mr. Curran: The sale, no; the conditions of sale, yes.

Senator Hollett: Advertising too?

Mr. Curran: Yes. There is no intention to permit any commercial advertising of these devices to the general public.

Senator Hollett: Then why advertise them?

Mr. Curran: Why advertising?

Senator Hollett: Yes.

Mr. Curran: The only advertising would be legitimate advertising on the part of family planning organizations, of which there is a number in Canada, that give professional, technical advice to families.

Senator Molson: Hear, hear.

Mr. Curran: To prescribe their activities would be a difficult thing, and the law or the regulations as they will be formulated will permit legitimate advertising to or counselling of, if you like, the public by family planning organizations and by organizations concerned with the dissemination of birth control information. That will be the scope of the regulations—not to interfere with their legitimate activities, as they have been carried out in the past.

Senator Molson: Mr. Chairman, I would like to follow through on Senator Burchill's question. In the event that advertising takes place which is not within the regulations prescribed, what then is the action within the power of the department?

Mr. Curran: The action which is within the power of the department is contained in section 25 of the Food and Drugs Act, which will permit a charge to be laid, punishable either on summary conviction or indictment, with the appropriate penalties for violation of the regulation.

The section says:

Every person who violates any of the provisions of this Act or the regulations is guilty of an offence and is liable

(a) on summary conviction for a first offence to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding three months or to both fine and imprisonment, and for a subsequent offence to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months or to both fine and imprisonment; and

(b) on conviction upon indictment to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding three years or to both fine and imprisonment.

So that would be the penalty that can be invoked for a violation of the regulations.

Senator Molson: And which is just as severe as might be imposed under the Criminal Code? There is no difference in this respect?

Mr. Curran: This is true, except that the Criminal Code contained almost an outright prohibition.

Senator McDonald: My interpretation would be that it would be much easier to get a conviction now than it was before under the Criminal Code.

Mr. Curran: That is right.

Senator Hollett: Why?

Senator McDonald: For the simple reason that advertising is opened up to the medical profession, family planning organizations, et cetera, but apart from that there is no provision for advertising or sale. I think there is now a much stronger position.

Mr. Curran: This is our view. We will be in a more effective position to control the situation than we were before.

The Acting Chairman: Honourable senators, I should like to point out that last year we passed Bill S-21 and Bill S-22, and this bill that is presently before us contains really the essence of those two bills. If there is no further discussion, would someone move that the bill be reported? Shall I report the bill without amendment?

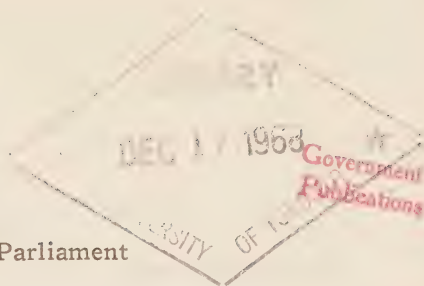
Hon. Senators: Agreed.

The Acting Chairman: Thank you, Dr. Chapman, and thank you, Mr. Curran.

The committee adjourned.



First Session—Twenty-eighth Parliament
1968



THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 8

Complete Proceedings on Bill S-3,

intituled:

"An Act to amend the Canada Evidence Act".

WEDNESDAY, NOVEMBER 27th, 1968

WITNESS:

Department of Justice: J. A. Scollin, Director, Criminal Law Section.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Fergusson	McDonald
Aseltine	Gélinas	Molson
Beaubien (<i>Bedford</i>)	Gouin	O'Leary (<i>Carleton</i>)
Beaubien (<i>Provencher</i>)	Grosart	Paterson
Benidickson	Haig	Pearson
Blois	Hayden	Phillips (<i>Prince</i>)
Bourget	Hays	Rattenbury
Burchill	Inman	Roebuck
Carter	Irvine	Smith (<i>Queens-</i> <i>Shelburne</i>)
Choquette	Isnor	Thorvaldson
Connolly (<i>Ottawa West</i>)	Kinley	Vaillancourt
Cook	Laird	Walker
Croll	Lang	Welch
Desruisseaux	Leonard	White
Dessureault	Macdonald (<i>Cape Breton</i>)	Willis—(49)
Everett	MacKenzie	
Farris	Macnaughton	

Ex Officio members: Flynn and Martin.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, November 20th, 1968:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Cook, seconded by the Honourable Senator Burchill, for the second reading of the Bill S-3, intituled: "An Act to amend the Canada Evidence Act".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Cook moved, seconded by the Honourable Senator Isnor, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, November 27, 1968.

(8)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Gélinas, Haig, Inman, Irvine, Kinley, Laird, Leonard, MacDonald (*Cape Breton*), Macnaughton, Pearson, Rattenbury and Welch. (20)

In attendance:

E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Upon Motion, it was *Resolved* to report recommending that 800 English and 300 French copies of these proceedings be printed.

Bill S-3, "An Act to amend the Canada Evidence Act", was considered, clause-by-clause.

The following witness was heard:

Department of Justice:

J. A. Scollin, Director, Criminal Law Section.

Upon Motion, it was *Resolved* to report the said Bill without amendment.

At 10.15 a.m. the Committee proceeded to the next order of business.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, November 27, 1968.

The Standing Committee on Banking and Commerce to which was referred the Bill S-3, intituled: "An Act to amend the Canada Evidence Act", has in obedience to the order of reference of November 20th, 1968, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

Salter A. Hayden,
Chairman.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Wednesday, November 27, 1968.

The Committee on Banking and Commerce, to which was referred Bill S-3, to amend the Canada Evidence Act, met this day at 9.30 a.m.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have one private bill and one public bill before us this morning, and I think we should proceed first with the public bill, which proposes certain amendments to the Canada Evidence Act.

Upon motion, it was *resolved* that a verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 copies in French be printed.

We have with us Mr. Scollin, Director of the Criminal Law Section, Department of Justice, and Mr. P. D. Beseau of the legislative section. Since this bill consists of a series of amendments, I think the best way of dealing with it would be to take it clause by clause and just discuss the change that is involved, and its departure from the present law.

Now, on that basis, Mr. Scollin, we start out with clause 2 of the bill which deals with Section 9. This is a repeal section and deals with the expert witnesses.

Mr. J. A. Scollin, Director, Criminal Law Section, Department of Justice: Mr. Chairman and honourable senators, perhaps I could say first of all that this is only the start of a general review of the Canada Evidence Act which is going to be made, and these particular amendments contained in Bill S-3 are the ones that were felt to be desirable now.

Clause 1 of the bill deletes subsection (2) of Section 7 of the Canada Evidence Act. Section 7 deals with the calling of expert witnesses and subsection (1) says that:

...not more than five of such witnesses may be called upon either side without the leave of the court or judge...

That is basically a fairly simple provision.

Subsection (2) provides that

Such leave shall be applied for before the examination of any of the experts who may be examined without such leave.

This you will probably understand very often creates trouble, because during the course of a hearing it may turn out that more than five expert witnesses will be required.

Occasionally lawyers, being what they are, forget to apply for this at all until it is too late. The proposal, therefore, is to remove this requirement in subsection (2) by the complete deletion of subsection (2) and to leave it up to the judge to grant leave in the event that more than five are required, and that leave can be obtained at any time.

The Criminal Law Section of the Uniformity Conference recommended this amendment in 1960 and this recommendation was reaffirmed in 1966 in the case of *Regina v. Barrs* in 1946. It was necessary for the Alberta court of appeal to quash a conviction for murder, and order a new trial simply because subsection (2) of section 7 had not been complied with. The original trial in this case lasted 15 days. In their own provincial Evidence Act the legislature of Alberta made this change in 1958. Other provinces have followed suit in their provisions; subsequently Ontario in 1960, Manitoba in 1965, and so on. The acts of Nova Scotia, Prince Edward Island, British Columbia and Newfoundland do not, in fact, contain any such restriction in their Evidence Acts.

Senator Croll: Did you say it was in 1946 that that was upset, or in 1964?

Mr. Scollin: 1946.

Senator Croll: What I do not understand is this. If the matter was recommended in 1960,

re-recommended in 1966, by the unfirmity board, why do we wait so long? Why did we wait? This is 1968. The first recommendation was in 1960, the second in 1966. This seems to be a matter of considerable importance, particularly in view of the judgment that you point out, where for 15 days they sat there and listened and someone was convicted, and later it has to be upset. Why have we not dealt with it sooner?

Mr. Scollin: I do not know really that I am in a position to answer that.

The Chairman: I suppose one answer might be that the mills of God grind slowly.

Senator Croll: But not that slowly, on such criminal matters. How long have you been there?

Mr. Scollin: I, personally?

Senator Croll: Yes?

Mr. Scollin: For whatever worth it is, I have been there a couple of years.

Senator Croll: Someone else before you had this?

Mr. Scollin: I think there are various factors. There is the question of opening up the act, the question of getting time to do these amendments, the question of getting parliamentary time. I think that various factors are involved in this. Also, notwithstanding *Regina v. Barrs*, the thing had worked reasonably satisfactorily before; and if counsel did in fact pay attention to what they were doing, they know when to ask leave. The fact is that it is something which can have unfortunate consequences; but if lawyers are on their toes and if they would ask at the proper time, this should not happen, when you can in fact get leave. It is only in a most unusual case that it becomes really necessary to ask for more than five expert witnesses. Normally this problem does not arise, but it is particularly applicable in a case where during the trial it suddenly develops that more experts are required.

Senator Connolly (Ottawa West): If you remove subsection (1), unless there is some provision elsewhere in the act, does it not follow that leave would not be required for the calling of any number of expert witnesses at any time?

The Chairman: If you remove subsection (1). But the proposal is to strike out only

subsection (2). If you took the whole section out, expert witnesses would be in the same position as any other witnesses.

Senator Prowse: You would be liable to surprise in trials continually.

The Chairman: Shall the amendment carry?

Senator Leonard: I move that the amendment carry.

The Chairman: It is carried.

Clause 2.

Mr. Scollin: Clause 2 of the bill proposes to add subsection (2) to the present section 9. Section 9 of the act prohibits a party producing a witness, from proving that that witness has made a previous inconsistent statement, unless the judge has declared that the witness is adverse. Various reasons are given for not giving a party liberty to discredit his own witness. The party has put him forward as being worthy of credit. It is also said that it would be unfair to subject a witness to one cross-examination by his own counsel and one by opposing counsel.

The Chairman: I think the basic principle is that if you put forward a witness you are asking the court to accept his credibility and then there must be a special reason, and you would need to have good reasons, for cross-examining him as though he were an opposing witness. This deals with what the circumstances may be. Generally, you would have to establish that he was an adverse witness. This deals with that very point, only in relation to an earlier or opposing or different construction shown by a statement he made.

Senator Prowse: In writing.

The Chairman: Yes.

Senator Prowse: It does not cover the situation where a person might know that they have information, then the other side are not going to call him, because they do not want his evidence; and if you call him, and if he becomes reluctant or forgetful or something like that—if he is smart about it, he is just going to be as friendly as the devil, but he cannot remember. If you have anything at all that is in writing to suggest that he ought to remember, you can put it in.

The Chairman: It is the run of the grain. You are not going to put a witness in the box who can be cross-examined usefully by the other side, if you can get the evidence you want from somebody else.

Senator Prowse: This deals with the point that the other side would not cross-examine, they would just get him off the stand.

The Chairman: This is a good provision, based on my experience. Shall the clause carry?

It is carried.

Clause 3 of the bill.

Mr. Scollin: Clause 3 is designed to expand the present section 29, dealing with methods of producing and proving bankers' books and records, to other deposit institutions. This is done by deleting the definition of the word "bank" in subsection (7)(b) and defining a "financial institution" in the way set out in subsection (7)(ba), by extending it to include any institution incorporated in Canada that accepts deposits of money from its members or the public.

The Chairman: That takes us almost right through in clause 3. The amendment in relation to section 29 of the act is to subsections (1), (2), (3), (4), (5), and (6), taking us through to halfway down on page 3 of the bill. They all deal with the changing of the word "bank" to any "financial institution". This is broadening the scope.

Senator Macnaughton: How far does the definition "financial institution" go? Does it cover investment companies, or any companies taking in money?

Senator Prowse: The definition is at the bottom of page 3.

Senator Macnaughton: I know, but somehow I do not think it is sufficient.

Senator Leonard: It is a question of taking deposits.

The Chairman: That is the test. One of the characteristics of a bank, as you know, in the broadened use of the words "financial institution", is that it must be some organization that takes deposits. Therefore, your question about the investment companies would not be pertinent to this.

Shall those subsections carry?

Hon. Senators: Agreed.

The Chairman: That brings us down on page 3 to subsection (6a). This appears to be a new subsection.

Mr. Scollin: Subsection (6a) is designed to enable an ordinary search warrant to be

executed on the premises of a financial institution, if it is specially so endorsed. This amendment was made necessary by a decision of the Supreme Court of Ontario in the *Queen v. Mowatt, ex parte*, Toronto Dominion Bank (1968), 2 C.C.C. 374.

In that case, Mr. Justice Lacourciere of the Supreme Court of Ontario, held that a bank which is neither suspected of an offence under the Criminal Code nor party to a prosecution is not subject to the authority of an ordinary search warrant under section 429 of the Criminal Code.

Tracing the history of this provision back to the Bankers' Books Evidence Act in England, the judge held that subsection (5) of section 29 was a special provision designed expressly for the convenience of banks to prevent disruption of business and was a special code, self-contained, relating to the instances under which a bank could be searched and books seized and taken away.

Subsection (6a) is designed to cover such a case, by providing that in an appropriate case a search warrant may be executed if it is specially endorsed.

The Chairman: And it is limited to inspecting and to taking copies.

Senator Macnaughton: The same procedure is followed by the Provincial Securities Commission. They can issue warrants for the examination and for taking copies.

The Chairman: Although the Securities Commission in Ontario may also seize books and records.

Shall this subsection carry?

Hon. Senators: Agreed.

The Chairman: It is carried.

Subsections (2) and (3) of section 3 of the bill deal with definitions, as you will note. Is there any comment on those definitions?

Senator Prowse: Would that cover both federal and provincial incorporation?

Mr. Scollin: That would cover both the provincial and federal incorporation, yes.

Senator Prowse: It would cover any incorporation at all? Would it include also the registration of a foreign company? Suppose you had a company incorporated in the United States that was registered and doing business in a province of Canada.

The Chairman: You mean a company that accepted deposits.

Senator Prowse: Perhaps that situation would not arise or would call for special provincial registration. I was thinking, for instance, of banks that have operated here but were not incorporated here.

The Chairman: You mean private banks.

Senator Prowse: For instance, the Mercantile Bank.

The Chairman: If they were not incorporated in Canada they would not get the benefit of this.

Senator Prowse: I have in mind trust companies and others doing business in the country today, taking deposits, particularly under provincial incorporation.

The Chairman: They would be covered.

Senator Prowse: But then suppose you have an American corporation that opens up an office in a province under provincial law? I suppose provincial law would permit that.

The Chairman: I do not say this was any finality, but I would not suspect that other than a Canadian incorporation could carry on.

Senator Prowse: I see.

Senator Leonard: This would include credit unions and the Caisses Populaires.

Mr. Scollin: That is so.

The Chairman: Carried?

Hon. Senators: Carried.

The Chairman: Section 4 of the bill.

Mr. Scollin: This section is designed to render records kept in the ordinary course of business admissible if certain specified conditions are met. The basic purpose of the amendment is to overcome the difficulties which the exclusionary hearsay rule has created in view of modern business techniques of recording entries in a business. Computerized records, for example, are frequently impossible to get into evidence under the present rules because there is no person who handled the transaction who can speak with personal knowledge of the transaction, or, even if there is, it may be difficult or impossible to identify or find such person.

I may say that in 1966 the Province of Alberta wrote to the Department of Justice

pointing out the difficulties arising in a similar kind of case to that which resulted in the English act.

In the case that was drawn to the attention of the department by the Deputy Attorney General of Alberta, an automobile theft ring was removing the more obvious identification numbers and plates from automobiles. If familiar marks, scratches and similar aids to identification by the owner are also removed, proof of identification of the altered vehicle as the stolen vehicle is virtually impossible by present methods.

Some manufacturers allotted identifying numbers to motor vehicles by means of a computer. These numbers are machine stamped on records, and in some cases two serial numbers are placed on the vehicle. Processing is done by numerous people and it is almost impossible for an individual to identify his particular contribution in each case. Motor vehicle manufacturers who allotted numbers by means of computers were unable to come to court and say, "Yes, this automobile was ours; it is stamped by our computerized machine."

The Chairman: All this does is to make admissible certain parts of evidence which would otherwise not be admissible. The weight of this or its credibility comes into play. In other words, the probative value of it is something to be determined in the course of the trial. At least it makes it admissible.

I was thinking about microfilm while Mr. Scollin was speaking. For instance, newspapers today microfilm back copies of their papers after a certain period of time has expired. They do this in the interests of saving space. If a person wants to look at a particular copy that goes back into that period, they put that person in a room with a gadget enabling him to look at microfilm and see what is in the paper. After the person locates what he wants the newspaper will have a transcript made. With this rule, of course, the matter of its admission could more readily go forward.

The general purport of this section of the bill which is adding a new section 29A to the Canada Evidence Act is dealing with this aspect of the admission of copies and the effect of the hearsay rule.

Shall the first nine subsections of the new section 29A in section 4 of the bill carry?

Hon. Senators: Agreed.

Senator Connolly (Ottawa West): May I ask one question on that before you leave it? You mentioned microfilm. Is there anything here that deals with the reproduction of information on tape recording material?

Mr. Scollin: The definition of "record", which is contained at the very bottom of page 7, in subsection (12)(e) is broadly enough defined to cover books, documents, papers, cards, tapes or other things, including electrical impulse storage, for example. That is our opinion.

Senator Leonard: Does that include tape recordings of tapped wires?

Mr. Scollin: The condition precedent to the record going in is that it is a record kept in the usual course of business. I would feel that unless somebody had been very naughty, that would not be a record made in the usual course of business.

Senator Connolly (Ottawa West): It would depend on the business.

The Chairman: We have carried the first nine subsections. Subsection 10 deals with evidence that is inadmissible under the section.

Mr. Scollin: First of all, under subsection (10), some of the things mentioned may be admissible under other provisions of the law in any event. This just says that they do not get the advantage of this section. Subsection (11) says the provisions of the section are in addition to other methods of admissibility. Subsection (10) is designed to keep out of the operation of this section certain records which are clearly not the kind of records which ought to be producible by affidavit or just speaking for themselves.

For example, a record made in the course of an investigation or inquiry would include things like statements taken by policemen from witnesses. These ought not to be thrown into court as taken in the ordinary course of business. And in subsection (10)(a)(ii), a record made in the course of obtaining or giving legal advice or in contemplation of a legal proceeding certainly, again, ought not to be thrown openly into court. These are privileged or private communications made between lawyer and client or between lawyer and witness in a case.

Senator Prowse: Mr. Scollin, this is actually what I had in mind. This would not preclude the production, say, of evidence that was

taken or notes that were taken by a lawyer in the case where he had been consulting with his client? This would be in a case involving a charge of conspiracy against lawyer and client. It only excludes things under the section.

Mr. Scollin: If they are admissible under another clause, they can go in. For example, under subsection (3). Then subparagraph (iv) of paragraph (a) of subsection (10) says that if on a matter the witness would not be competent or compellable, such matter occurring in a record in the ordinary course of business cannot go in under this section. Paragraph (b) deals with matters concerning national security or public policy, and these records cannot go in, under the section.

Paragraph (c) of subsection (10) means that you cannot throw in *holus bolus* in a trial the transcript of the proceedings taken in a previous trial. You will notice that the definition of "business" includes "court". Were it not for this paragraph it might be argued that the transcript could be thrown in as made in the ordinary course of business, but this is not the intention.

Senator Prowse: A record made by a court might almost fall under (i).

Mr. Scollin: It might fall under subparagraph (i) of paragraph (a).

The Chairman: I am wondering whether the transcript of evidence taken at a previous trial could be used in a repeat of the trial on the basis that it was made during the ordinary course of business.

Senator Prowse: This would seem to make it all immaterial. If it were to follow an investigation, I would suggest it might be excluded under that. But this spells it out.

Mr. Scollin: The Criminal Code outlines very limited circumstances in which a previous transcript may be used.

Senator Connolly (Ottawa West): I want to ask a question before I leave for another committee. In the course of the discussion conducted here this morning by Mr. Scollin, we have been talking about the "ordinary course of business" and that is set out in subsection (12)(a). But what about organized crime where people in the normal course of their business conduct illegal business? Is that covered?

Mr. Scollin: There is no restriction in the act to lawful business. I think the test is a

factual test. That is, whether the business is carried on or not. Whether it is an unlawful or lawful business I do not think is relevant.

The Chairman: Except that "business" means any business. If you just stop there, it would seem that whether you were doing something unlawful, it may still be a business.

Senator Prowse: This may be important in instances where there are prohibitions on the use of evidence. But if they can be produced, as Mr. Scollin suggested, where you have a matter of conspiracy or where you are charging people with conspiracy, this evidence has been obtained in the lawyer's file in the form of notes. I am thinking of a particular instance where the allegations in the particular case were based on the notes in the lawyer's file. Under subsection (10) they would not be producible, and provided this is limited to a financial institution, that is one thing. But when it comes to the question of losing privilege, the moment I am alleged to have conspired with a client, then I think in that instance both of us lose privilege.

Mr. Scollin: I think this privilege may be lost in circumstances where you are unknowingly a party to a conspiracy by the client.

Senator Prowse: Because it is his privilege?

Mr. Scollin: I think there is some authority to that effect. If what you are doing is unknowingly illegal, the privilege does not exist. It would seem to follow that you would not be giving "legal" advice in the operation of a known illegality.

The Chairman: The privilege we are talking about is the privilege of the client.

Senator Croll: Was there any thought given to extending this to accountants who are in the situation just as often as lawyers?

Mr. Scollin: The position of doctors, accountants, probation officers and people who receive confidential information is something that is going to await an overall review of the laws of evidence. There is a number of cases where there is something to be said for looking to see whether or not a privilege should be created for these people who are frequently involved in situations involving confidential communications. But at the present time the only privilege recognized is that between solicitor and client. I think, however, if we are going to look into the area of recognizing further privileged situations, it would have to

be done by way of an overall review of the legislation rather than by just adding pieces here and there.

Senator Connolly (Ottawa West): Senator Croll's question is an interesting one because I can remember cases where medical people claimed privilege and sought recognition for the rights of privilege, but the courts put it, as far as I recall, that there was no such privilege and that the disclosure made by the patient to the doctor had no protection whatever.

Mr. Scollin: Recently Mr. Justice Stewart in Toronto did recognize it in one case where a doctor declined to answer—he refused to force him to answer. This was a psychiatrist. But that is not settled law yet.

Senator Croll: When you say it is not settled law, I may be wrong, but I have an idea that this privilege has been extended in Great Britain to accountants particularly in matters involving taxes and where the lawyer fights only half the battle and an accountant is involved just as much as the lawyer. I understand it has been extended in Britain. Could I be wrong?

Mr. Scollin: I am not aware of the extension to accountants in Britain.

Senator Prowse: But in any event, the general field of the extension of privilege is at present under review and may be coming to us in the form of further amendments later.

Mr. Scollin: I think it would be wrong to give the impression that somebody is sitting down and going through this now. But the whole situation will shortly be under review so far as the law of evidence is concerned.

Senator Croll: Well, do not make us wait eight years for it this time.

The Chairman: We might even send for you.

Senator Croll: We might even draft a bill ourselves.

The Chairman: Shall these subsections (10), (11), and (12) carry?

Hon. Senators: Carried.

The Chairman: Then we come to section 5 of the bill. There does not seem to be very much to that.

Mr. Scollin: This is just designed to remove some words from the bottom of the form—the

words "and by virtue of the Canada Evidence Act." This amendment was recommended by a number of members of the legal profession and by the conference of commissioners for uniformity of legislation. The idea is to enable the standard form to be used for all jurisdictions. Very often people have difficulty in knowing whether the oath they are taking is under a provincial act or a federal act, and many provinces use the same form. If the wrong act is referred to, this might cause difficulty in a prosecution under section 114. The idea here is to take out the specific reference to the Canada Evidence Act and end this form with the word "oath". So that for the purposes of section 144, for example, making

a false statement, it does not really matter whether it is false because of the Canada Evidence Act, the federal jurisdiction, or because of the provincial jurisdiction.

The Chairman: Shall this section carry?

Hon. Senators: Carried.

The Chairman: Shall I report the bill without amendment?

Hon. Senators: Carried.

The Chairman: Thank you, Mr. Scollin.

Whereupon the committee concluded its consideration of the bill and proceeded to the next order of business.



Government
Publications

First Session—Twenty-eighth Parliament

1968

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 9

WEDNESDAY, NOVEMBER 27th, 1968

Complete Proceedings on Bill S-16,

intituled:

"An Act to incorporate Transcoastal Life Assurance Company".

WITNESSES:

Department of Insurance: R. Humphrys, Superintendent.

Transcoastal Life Assurance Company: Douglas Thornsjo, Vice-President
and Counsel, Union Mutual Life Insurance Company. John D. Richard,
Parliamentary Agent.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Fergusson	McDonald
Aseltine	Gélinas	Molson
Beaubien (<i>Bedford</i>)	Gouin	O'Leary (<i>Carleton</i>)
Beaubien (<i>Provencher</i>)	Grosart	Paterson
Benidickson	Haig	Pearson
Blois	Hayden	Phillips (<i>Prince</i>)
Bourget	Hays	Rattenbury
Burchill	Inman	Roebuck
Carter	Irvine	Smith (<i>Queens-</i> <i>Shelburne</i>)
Choquette	Isnor	Thorvaldson
Connolly (<i>Ottawa West</i>)	Kinley	Vaillancourt
Cook	Laird	Walker
Croll	Lang	Welch
Desruisseaux	Leonard	White
Dessureault	Macdonald (<i>Cape Breton</i>)	Willis—(49)
Everett	MacKenzie	
Farris	Macnanughton	

Ex Officio members: Flynn and Martin.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, November 19th, 1968:

“Pursuant to the Order of the Day, the Honourable Senator Lamontagne, P.C., moved, seconded by the Honourable Senator Boucher, that the Bill S-16, intituled: “An Act to incorporate Transcoastal Life Assurance Company”, be read the second time.

After debate,

The Honourable Senator Fournier (*de Lanaudière*) moved, seconded by the Honourable Senator Flynn, P.C., that further debate on the motion be adjourned until the next sitting of the Senate.

After debate, and—

The question being put on the motion, it was—
Resolved in the negative, on division.

The question then being put on the motion of the Honourable Senator Lamontagne, P.C., seconded by the Honourable Senator Boucher that the Bill S-16, intituled: “An Act to incorporate Transcoastal Life Assurance Company”, be read the second time, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Lamontagne, P.C., moved, seconded by the Honourable Senator Boucher, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative.”

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, November 27th, 1968.

(9)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.15 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Gelinas, Haig, Inman, Irvine, Kinley, Laird, Leonard, Macdonald (*Cape Breton*), MacNaughton, Pearson, Rattenbury and Welch. (20).

In attendance:

E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Upon Motion, it was *Resolved* to recommend that 800 English and 300 French copies of these proceedings be printed.

Bill S-16, "An Act to incorporate Transcoastal Life Assurance Company", was considered.

The following witnesses were heard:

Department of Insurance:

R. Humphrys, Superintendent.

Transcoastal Life Assurance Company:

Douglas Thornsjo, Vice-President and Counsel, Union Mutual Life Insurance Company.

John D. Richard, Parliamentary Agent.

Upon Motion, it was *Resolved* to report the said Bill without amendment.

The names of the Honourable Senators Bourget and Molson were removed from the list of members serving on the Steering Committee.

At 10.45 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, November 27th, 1968.

The Standing Committee on Banking and Commerce to which was referred the Bill S-16, intituled: "An Act to incorporate Transcoastal Life Assurance Company", has in obedience to the order of reference of November 19th, 1968, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Wednesday, November 27, 1968

The Standing Committee on Banking and Commerce, to which was referred Bill S-16, to incorporate Transcoastal Life Assurance Company met this day at 10.15 a.m. to give consideration to the bill.

Senator Salter A. Hayden (*Chairman*): In the Chair.

The Chairman: We now have a private bill, Bill S-16, for consideration. It is an act to incorporate Transcoastal Life Assurance Company.

Upon motion, it was *resolved* that a verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 in French be printed.

The Chairman: We have as witnesses Mr. Douglas Thornsjo and Dr. Normand J. Beliveau of the Transcoastal Life Assurance Company; and, of course, Mr. Humphrys, the Superintendent of Insurance.

Shall we follow our usual practice and have the statement from the Superintendent?

Hon. Senators: Agreed.

The Chairman: Mr. Humphrys?

Mr. R. Humphrys, Superintendent, Department of Insurance: Mr. Chairman, honourable senators, the purpose of this bill is to incorporate a new life insurance company. The principal shareholder of the new company will be a United States life insurance company, the Union Mutual, with its head office in Portland, Maine. The Union Mutual is a very old, well-established United States company, having been formed in 1848. It has been doing business in Canada for 100 years, as was mentioned in the debate in the Senate.

The company has developed a considerable volume of business in Canada, mostly in the group and accident and sickness field. They now wish to incorporate a Canadian subsidiary for the further and future development of their activities in Canada, rather than con-

tinuing to operate on a branch basis, as has been the case heretofore. However, it is not the intention of the Union Mutual in any way to alter the existing contracts of insurance it has entered into in Canada, but if Parliament grants this charter, and if this new company is organized, the pattern is likely to be that the new company, being a Canadian entity, will undertake the administration of the existing business in Canada of the Union Mutual.

I should emphasize that this would be without change in the contracts and without change in the security behind those contracts. They will still remain contracts of the Union Mutual and the obligations of that company, and we will still continue to maintain assets in Canada to cover the liabilities in Canada of that company.

I understand that their desire to have a Canadian subsidiary springs from their wish to expand their operations in Canada, and from a consideration that their volume has grown and they think there are advantages really to Canadians and to themselves in having a Canadian corporation to carry on the business in Canada.

The Chairman: The ownership of the operation would remain the same, it would be a wholly-owned subsidiary?

Mr. Humphrys: The company would be formed as a wholly-owned subsidiary of the Union Mutual and the entire capital and surplus would be put up by that company.

The bill to incorporate the new company, called the Transcoastal Life Assurance Company, is, with one exception, in the standard form. It is the same as bills for this purpose that have been before this committee many times.

It states the name of the company; the location of the head office; the initial capital being \$1 million; and it is provided that there must be at least \$1 million paid and at least \$500,000 in addition in surplus before the company can start business. It will have the

power of undertaking life, personal accident and sickness insurance. The Canadian and British Insurance Companies Act will apply in the usual way.

The one provision which is unusual is in clause 8 of the bill, and this provides that within the first five years of operation of the company they will be obliged to sell off at least 25 per cent of the stock, and within the first 10 years at least 49 per cent. These provisions are being sought by the petitioners as an indication of their desire to hold out the opportunity for participation by Canadians in this enterprise; and it is provided that if the shares are not sold as so indicated, then the principal shareholder will no longer have the right to vote.

Senator Croll: Mr. Humphrys, tell me, how do you enforce section 8?

Mr. Humphrys: I should explain this, senator, that this is not a provision that is required to be in a draft bill; it is not part of the standard bill we have seen so often, and the standard bill that is incorporated in the schedule to the Insurance Companies Act. This particular provision is sought by the petitioners. As far as the department is concerned, we have no objection to them seeking the imposition of this restriction on themselves, and it is an indication of their intention to make participation in ownership available; and if they do not do it, then they lose the right to vote.

So the sanction is that at a meeting the votes of the shares owned by the principal shareholder could not be cast, so it does not seem to me, or it did not seem to us in the department, that we needed to press for any particular penalty, because they would lose their voting right. If at a meeting a dispute arose where the principal shareholder had one view and the other shareholders had other views, then the other shareholders would carry the day because the secretary would be required to reject any votes cast by shares owned by the principal shareholder, since the bill says "no person shall... exercise the voting rights".

The Chairman: Let us assume that no shares were sold off. Therefore, you have a position, say, at the end of five years, and at the end of 10 years, where the principal shareholder owns the total of all the shares?

Mr. Humphrys: There are two points on that. One is that there would be directors' qualifying shares, and the majority of direc-

tors must be Canadian citizens resident in Canada. If the shares owned by the principal shareholder could not be voted, the votes would be in the hands of the directors, and the majority would be Canadian citizens resident in Canada.

If this company issues participating policies, which it undoubtedly will do, the parent, being a mutual company, then under the Insurance Act each holder of a participating policy has the right to attend and vote at the annual meeting, so policyholders' votes would be of prime importance.

Senator Cook: You have outside shareholders by section 1.

Mr. Humphrys: It would have to be directors' qualifying shares.

The Chairman: But the shareholders hold one share each qualifying them as directors, and they are Canadians, but if they do not hold their shares in their own right—in other words, have the beneficial interest in them—then they would be disqualified under this subsection (2).

Senator Leonard: Under the general act they have to own their own interest, do they not?

Mr. Humphrys: The general act requires the shareholders to own the shares.

Senator Leonard: That is, the shares are registered in their own names.

Mr. Humphrys: Yes.

Senator Macnaughton: I do not understand the underlying purpose of this provision.

Senator Croll: The underlying purpose of the provision is to get the bill through the House of Commons.

Senator Macnaughton: But how do you propose to offer these shares?

Mr. Humphrys: I shall have to ask the representatives of the company to answer that question.

Mr. Douglas Thornsjo, Vice-President and Counsel, Union Mutual Life Insurance Company: I am the vice-president and counsel of the Union Mutual. We feel it is impossible at this time to establish the precise method of distribution for the first 25 per cent interest, and then the subsequent 24 per cent interest. Ordinarily we would expect to go to a

brokerage house or a securities house, and have them do the underwriting in which these shares would be offered to the public. In addition, we have given oral assurances to our provisional board of directors that if they wish to increase their direct holdings in the company they would have the first option to do so. So, the Canadian directors will take the shares they wish to take, and after that we would expect there to be an underwriting and a public offering of the securities.

Senator Prowse: An immediate public offering?

Mr. Thornsjo: No, we would like the five year provision—within five years. I think the principal reason for that is that a new insurance company in its first few years does not look too attractive, and we feel we have an obligation to the public. We are confident we are going to run this company successfully, but until we prove it we do not think we have any business offering shares in a new insurance company to the public. I will go so far as to say that that is the traditional feeling of the insurance regulators, that you do not offer shares to the public until the company has been seasoned to some extent.

Senator Prowse: By the time these shares get to the public they will have a value greater than the original subscription price?

Mr. Thornsjo: I would think so, sir.

Senator Croll: When you speak of an oral undertaking I would point out that we cannot take too much notice of that. You may then be president instead of general counsel.

Mr. Thornsjo: There is no question about it.

Senator Croll: It is conceivable that the directors may consist of five nominees. They may even hold the shares in their own right, and they can deal with the thing completely.

Mr. Thornsjo: I think that we should be very candid with the committee on this point. One of your members pointed out that a principal objective of this provision is to get the bill through the House of Commons. There is no question but that this plays a part in our thinking. But, equally, we have a sincere feeling that we would be better off with a slice of a company that is controlled and owned by Canadians than we would be with the whole cake owned by ourselves. We feel there is a legitimate nationalistic attitude in Canada today that should be recognized and honoured.

To show you how sincere we are on this point, I will review the issues here. This is not a provision that is ordinarily put in, because it is not required. We, however, are sincere about the undertaking we are making, and if it is the wish of this committee we are prepared to introduce an amendment to this bill which would provide for fine and punishment of the officers of the company in the event that the 25 per cent and the additional 24 per cent provisions are not adhered to. So, we are dead serious about this. We will go as far as the committee wishes us to go.

Senator Croll: Have you an amendment that we can look at?

Mr. Thornsjo: I believe we have.

The Chairman: Frankly, I do not think we should concern ourselves with that phase of it. Have you a view on this, Mr. Humphrys?

Mr. Humphrys: I would not think it would be necessary to impose a penalty on the company, since they are seeking a clause in their charter that has not been put in other charters. It is not something that is required by law. They are seeking to have this condition imposed upon themselves. The penalty of having your voting rights suspended strikes me as being pretty severe.

The effect of a contravention here, as has been pointed out—I think this clause is one that is in the general insurance act, and in another connection, and it is intended to cover the case where, notwithstanding the prohibition, there is an inadvertent violation and votes are cast where there is not, perhaps, a question at issue, and nobody wanted to suspend the meeting if there was not an issue, but if there was an issue clearly it would not be very hard to discover that the principal shareholder was prohibited from voting.

So, I would not feel—this is certainly the department's point of view—that the company needs to be made subject to a penalty if notwithstanding this prohibition any officer does cast a vote. But, I do not think we should put in a penalty for failure to sell the shares, because it is one thing to have an intention of selling the shares, and another thing to find a buyer.

Senator Croll: I defer to the Superintendent.

Senator Cook: That would be a continuing disability? In other words, that would continue from year to year, and would hang over their heads?

Mr. Humphrys: Yes.

The Chairman: These people are offering to practise a degree of self-denial by which they take less than 100 per cent of what the law would permit them to take.

Senator Prowse: Well, it is their business except to this extent—this, on the face of it, I presume, would be necessary for them to do. Now, suppose they have a meeting and unauthorized persons vote. The vote is not void *ab initio*, but within a year a special general meeting can then void it. If at that special general meeting improper persons vote again—and by the time you can call a second general meeting more than a year has gone by—then presumably you cannot get back with the original one. It may be a desirable thing, and it gets into another field. I do not think anybody in this house or in the House of Commons is going to fail to notice this. Probably there is no effective way of policing this thing without endangering the position of the policyholders. In other words, if you suddenly put in penalties it will jeopardize the position of the company and, therefore, jeopardize the position of the policyholders. I do not think anybody wants to do that.

My own feeling about this is where you have something that purports to provide protection when, in fact, it cannot provide that protection, it becomes perhaps an honest form of misleading. I do not say that in any nasty sense, but with the best intentions in the world you are doing something which is going to end up different from what you intend. I would sooner see it without this in it.

The Chairman: Senator, you used the word "protection". Are you suggesting that the provisions in this section in relation to the 25 per cent and the 49 per cent are in the nature of a protection? If they are, then who is being protected?

Senator Prowse: I take this as being a form of protection of Canadians' desire today to be masters in their own house. This, I think, is the intention of the company and I commend them for it, but as the body passing legislation, where what they intend to achieve cannot be achieved, I do not think we should go ahead and put it in. I would sooner leave them with an undertaking to the Superintendent that they would do this than have it written into legislation, when the legislation becomes in effect meaningless.

The Chairman: Frankly, I would rather see it in the bill if you are going to do it at all than have it in the form of an undertaking that the Superintendent approves.

Senator Croll: Are not we better off to give them the normal bill that other corporations have and take a chance with it rather than do what they are attempting to do here, in all good faith, which in the end may be very misleading? Are not they better off if they have these sections out of it completely and ask for the incorporation of a bill, which I am prepared to give.

The Chairman: I do not have a crystal ball, but my guess based on past performance in the other place in relation to private bills, which is not very different from this, has been that a provision of some kind in this direction has been inserted as the result of discussion in committee in the other place, and then the bill will come back to us to approve it as amended. Therefore, we might just as well deal with it now. This is what they ask for, and there is nothing wrong with what they ask for.

Senator Prowse: Might I ask two questions which I think will put everything in perspective? They should be directed to one of the officers of the company. The two questions, which I can ask in one, are these: how long has Union Mutual, which is going to be the parent here, been operating in Canada, and what is the present total volume of business for which they are responsible in Canada?

The Chairman: You understand that they operate as a branch in Canada?

Senator Prowse: I am talking about the Canadian branch.

The Chairman: I think we were told they have been operating 100 years in Canada.

Senator Prowse: Well, he has the answer.

Mr. Thornsjo: This year the company will have been operating for 100 years. I think the following figures give the reply to your question. As of the end of 1967 we had in force ordinary life insurance policies of \$5,739,457; we had group life insurance policies in force of \$91,449,692; in terms of premium, the single biggest figure was, as Mr. Humphrys indicated, group health premiums, of which in 1967 we wrote \$3,223,400. I think the significance of these figures is the rapid substantial increase. For example, in 1965 we had

only 21,000 group health certificate holders; these are individuals covered by group health certificates. In 1966 that number moved from 21,000 to 38,000; from 1966 to 1967 the number moved from 38,000 to 329,000. It is that kind of tremendous recent increase in the number of people covered in Canada and the premium volume increase in Canada that we felt belonged in a Canadian company.

Senator Prowse: In other words, what you are doing is translating the business which had hitherto been carried on as a branch of the American company into a Canadian company?

Mr. Thornsjo: I am not sure I understand your question.

Senator Prowse: From here out?

Mr. Thornsjo: Yes, prospectively.

Senator Prowse: Prospectively the new business will be written in the name of the new company?

Mr. Thornsjo: Yes.

Senator Prowse: But this company will take over the administration?

Mr. Thornsjo: Yes.

Senator Prowse: But they are not absorbing?

Mr. Thornsjo: No, sir.

Senator Prowse: Which was the picture we got the other day, that this was a company being formed to absorb the company presently operating. That is not so?

Mr. Thornsjo: No, sir. The only thing the new company will do vis-à-vis the old business is to service it. With the withdrawal of the Union Mutual from the selling of new business in Canada, necessarily we would have to close offices. It would be unfair on and inconvenient for an existing policy-holder not to have a place to go to for attention here, so the new company proposes, in return for a fee from the old, to maintain offices and personnel so that existing Canadian policy-holders have no contractual rights impaired as to convenience of servicing. If he wants to change his beneficiary, if he wants to get some questions answered, if he wants a claim paid, he can go to the same place he has gone to in the past and get that servicing.

Senator Prowse: It is the intention, as far as it is possible for you to do it, to divest yourself of up to 49 per cent to Canadian owners?

Mr. Thornsjo: Yes, sir.

The Chairman: Are you ready for the question? Shall I report the bill?

Senator Macnaughton: I am rather stupid this morning and there is one question I should like an answer to. What is the effect of section 8 subsection (3)? It says:

If any provision of this section is contravened at a general meeting of the Company, no proceeding, matter or thing at that meeting is void by reason only of such contravention, but ... is ... voidable at the option of the Company.

That means that only the company can make it voidable.

Mr. John D. Richard, Parliamentary Agent: It is the company acting by means of a special general meeting of the shareholders who are otherwise eligible to vote at that meeting. I may say, gentlemen, although I do not want to delay you too long on this point, we were inspired in drafting section 8(3) by the wording of the present section 16D(4) of the Canadian and British Insurance Companies Act, which was passed by Parliament in 1964 and assented to early in 1965. I might also say that the provision is identical to a provision to be found in section 8(3) of an act incorporating the United Investment Insurance Company, which was approved by the House of Commons on July 4, 1967, which is Bill C-114. This type of clause that we are proposing has been approved by Parliament in a public bill, and was given effect to in a private bill as recently as July, 1964.

Senator Macnaughton: But what does it mean?

Mr. Richard: It means the actions are voidable but not void *ab initio*. If a contravention occurs the proceedings taken at the meeting are not void *ab initio* but are voidable, and in order to become voidable they must be voided by a meeting of shareholders held within one year from the general meeting at which the contravention took place.

The Chairman: And a resolution of the shareholders at that meeting declaring the vote void?

Mr. Richard: Yes. Some legitimate concern was expressed for policyholders. As Mr. Humphrys pointed out during appearances before the committee in the other place, which I think will commend itself to your reasoning, matters carried on at a general meeting of shareholders do not necessarily affect the policies and contracts between the insurer and the insured. Basically these are the proceedings which could be avoided, not the contract of the insurance between the company and itself, the insured.

The Chairman: Are you ready for the question?

Mr. Richard: I think it may be of some assistance to you if I told you who the people are. I have three of the provincial incorporators in attendance, Dr. Belliveau from Montreal, a surgeon and Immediate-Past President of the Canadian Medical Association and a past president of the Quebec Medical Association; Dr. Cyril Rotenburg of Toronto, a Director of Radiology at Toronto East General Hospital, and Edouard J. Bourque, a well-known businessman in the national capital area. The other two gentlemen are Dr. Roberts and Mr. Cameron. However, they were not

available this morning. It is intended that these gentlemen will take a very active participation in this company.

Senator Cook: I should like to raise a point on subsection (3) of section 8. Does this mean the contract with a third party is voidable at the option of the company?

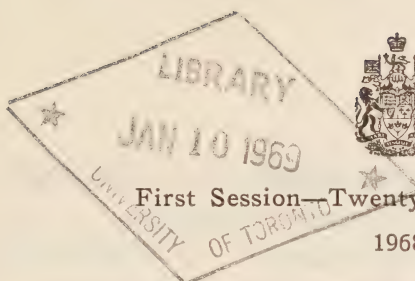
The Chairman: Senator Cook, I think the situation would be the same as if you were dealing with, say, some different kind of company and you were making a contract with them. If you did not examine the authorities and the limits on the authorities and if there is voidability, the effect of that is that you just would not make a deal.

Senator Cook: It is a big assumption put in there.

The Chairman: If they have legal advice they would be taken care of. If they have not legal advice sooner or later they have to come to the lawyer. Shall we report the bill without amendment?

Hon. Senators: Agreed.

The committee adjourned.



Government
Publications

First Session—Twenty-eighth Parliament
1968

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE ON

BANKING AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 10

TUESDAY, DECEMBER 10th, 1968

Complete Proceedings on Bill S-18,

intituled:

“An Act respecting Canadian Order of Foresters”.

WITNESSES:

Department of Insurance: R. Humphrys, Superintendent.

Canadian Order of Foresters: R. G. S. McIntosh, General Counsel. S. J. Beaudoin, General Manager.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Fergusson	McDonald
Aseltine	Gélinas	Molson
Beaubien (<i>Bedford</i>)	Gouin	O'Leary (<i>Carleton</i>)
Beaubien (<i>Provencher</i>)	Grosart	Paterson
Benidickson	Haig	Pearson
Blois	Hayden	Phillips (<i>Prince</i>)
Bourget	Hays	Rattenbury
Burchill	Inman	Roebuck
Carter	Irvine	Smith (<i>Queens-</i> <i>Shelburne</i>)
Choquette	Isnor	Thorvaldson
Connolly (<i>Ottawa West</i>)	Kinley	Vaillancourt
Cook	Laird	Walker
Croll	Lang	Welch
Desruisseaux	Leonard	White
Dessureault	Macdonald (<i>Cape Breton</i>)	Willis—(49)
Everett	MacKenzie	
Farris	Macnaughton	

Ex Officio members: Flynn and Martin.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, November 26th, 1968:

"Pursuant to the Order of the Day, the Honourable Senator Leonard moved, seconded by the Honourable Senator Fergusson, that the Bill S-18 intituled: "An Act respecting Canadian Order of Foresters", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Leonard moved, seconded by the Honourable Senator Fergusson, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

TUESDAY, December 10th, 1968.

(10)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Salter A. Hayden (*Chairman*), Aseltine, Benidickson, Burchill, Carter, Connolly (*Ottawa West*), Croll, Everett, Flynn, Haig, Inman, Irvine, Isnor, Kinley, Lang, Leonard, MacDonald (*Cape Breton*), Macnaughton, Pearson, Rattenbury, Smith (*Queens-Shelburne*), Welch and Willis. (23)

In attendance:

E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Upon motion, it was *Resolved* to recommend that 800 English and 300 French copies be printed of the proceedings of this day.

Bill S-18, "An Act respecting Canadian Order of Foresters", was considered.

The following witnesses were heard:

DEPARTMENT OF INSURANCE:

R. Humphrys, Superintendent.

CANADIAN ORDER OF FORESTERS:

R. G. S. McIntosh, General Counsel.

S. J. Beaudoin, General Manager.

Upon motion, it was *Resolved* to report the said Bill without amendment.

At 9.50 a.m. the Committee proceeded to the next order of business.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

TUESDAY, December 10th, 1968.

The Standing Committee on Banking and Commerce to which was referred the Bill S-18, intituled: "An Act respecting Canadian Order of Foresters", has in obedience to the order of reference of November 26th, 1968, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Tuesday, December 10, 1968.

The Standing Committee on Banking and Commerce, to which was referred Bill S-18, respecting Canadian Order of Foresters, met this day at 9.30 a.m. to give consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have two bills before us this morning, the first is a small private bill, that is small when compared with the size of the second one, and certainly so far as the volume of paper is concerned, and I thought we might deal with that first. Since this bill, S-18, originated in the Senate I think we should print the proceedings. Do I have a motion to that effect?

Upon motion, it was *resolved* that a verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 in French be printed.

The Chairman: Mr. Humphrys is here and it is our practice to have him make his report first. By the way, Senator Leonard, you dealt with this in the Senate. Is there anything you wish to add?

Senator Leonard: There is nothing I wish to add other than to say that in addition to Mr. Humphrys we have Mr. R. G. S. McIntosh, general Counsel for the Canadian Order of Foresters and also Mr. Serge J. Beaudoin, General Manager.

The Chairman: Well, if they feel it is necessary to add anything after Mr. Humphrys has spoken, they will have an opportunity of doing so.

Mr. R. Humphrys, Superintendent, Department of Insurance: Mr. Chairman, honourable senators, the purpose of this bill is to convert an existing society, the Canadian Order of Foresters from provincial jurisdiction to federal jurisdiction. The Canadian Order of Foresters is a fraternal benefit society having

been incorporated pursuant to Ontario law in 1879. Since then it has operated successfully as a fraternal society and now is established in all provinces of Canada. It has assets of around \$29 million, and it has an insurance business of \$85 million. It issues all normal types of life insurance and endowment insurance. As a fraternal benefit society it operates first through local courts where the members belong, and then the local courts elect representatives to attend High Court meetings which are periodic conventions of this society held every two years.

The society is in a strong financial position and has, as I have indicated, a substantial amount of business, but it has suffered from the same problems which have beset many other fraternal societies in recent years. The peak of fraternal activity in the sense of fraternal benefit societies was reached many years ago, and since that time there have been some problems for fraternal societies to keep themselves alive.

This organization has some 350 courts across Canada and it has maintained a significant degree of membership. They find, however, that it is somewhat difficult to compete in the insurance area with insurance companies and mutual insurance companies, and they would like to develop their activities and their own insurance business in a more extensive way than has been the case in the past. They are seeking a federal incorporation because they feel among other things that it is more appropriate when they are doing business right across the country, and they also think that it will improve their competitive position and their efforts to develop a more active membership and a more extensive development of their business.

The nature of the bill itself follows the pattern of three bills that have been before the Senate and this committee in recent years, where the legislation would continue the organization as if it had been originally incorporated by the Parliament of Canada and would thereby come under the jurisdic-

tion of Parliament and be subject in all respects to the Canadian and British Insurance Companies Act just as if it had been originally incorporated by special act.

Mr. Chairman, I think that summarizes the purpose of the bill, it would continue to incorporate the organization as a federal society; it would be endowed with the power to issue life insurance, personal accident insurance and sickness insurance, and it would be a fraternal benefit society pursuant to the Insurance Act. It would be empowered to insure its members only and would be issuing that insurance on a principle which is quite important to fraternal societies, namely the open contract which makes the constitution and the by-laws of the society part of the contract of membership, and thus it is open to the society to change its by-laws and levy additional assessments should that ever be necessary to maintain the financial strength of the society. As a matter of fact, that power has very rarely been used by societies, and this society is in a very strong financial position. I mention it, not because it is likely to be used, but as perhaps the most distinguishing and interesting of fraternal societies as compared with life insurance companies.

Senator Burchill: I do not see one Canadian order, the Independent Order of Foresters.

Mr. Humphrys: They are different organizations but their objectives and purposes are not very different.

Senator Burchill: Is the I.O.F. federal?

Mr. Humphrys: Yes.

The Chairman: Are there any other questions you wish to ask Mr. Humphrys? Thank you, Mr. Humphrys. Mr. McIntosh, if you feel there is anything you can usefully add, it is your turn now.

Mr. R. G. S. McIntosh, General Counsel, Canadian Order of Foresters: Thank you, Mr. Chairman. Honourable senators, perhaps I might take a few moments to add some minor points to what Mr. Humphrys has said. The Canadian Order of Foresters is purely Canadian. This is one of the important factors for your consideration, I think, at this time. It is purely Canadian and operates in most provinces of Canada, from Newfoundland to the Pacific. Administratively as well as competitively it is desirable to have it federally incorporated. It would certainly assist in the administration of the company's activities, as

well as to perform competitively with other companies.

Senator Isnor: What do you mean by "competitive"? Have you any competition?

Mr. McIntosh: Mr. Humphrys mentioned that it is from a competitive point of view that the company would desire to be federally incorporated. I am suggesting that administratively also it would assist, in making its returns, and so on, on a federal basis rather than dealing with each province as it now is, because it is operating in most provinces.

Senator Isnor: Are the benefits limited to the membership?

Mr. McIntosh: Yes, they are.

Senator Benidickson: In addition to paying the normal premium for insurance, there must also be a membership fee?

Mr. McIntosh: Yes, this is right. The members and the policyholders are one and the same as far as voting membership is concerned. I believe more will be said in that regard in a few moments.

Senator Leonard: I do not see Senator Grosart here, who asked in the Senate whether or not the members had been consulted about the intention to change the name and the status of the society. I gave my own answer, to the best of my knowledge and belief, that that was so, but I did say the question could be definitely answered by the officers of the society before this committee. In the absence of Senator Grosart, I think we should ask Mr. McIntosh to give the committee the answer to that.

Mr. McIntosh: First of all I would suggest that by the constitution the members of the fraternal organization and the policyholders are one and the same. There are different classifications of members, but the beneficiary members—that is, those who have voting privileges—are one and the same. I believe this is the answer to Senator Grosart's question which appears in *Hansard* of November 26.

He also wished to have made clear to your committee that the provisions of the constitution had been fully complied with in all respects. The proposal to proceed with the application now before you originated from the Need and Welfare Committee of the Canadian Order of Foresters, which is composed of the membership itself. They suggested before and after the last biennial meeting,

the last general meeting of the membership, held in July, 1967, that this be proceeded with. Following that presentation of the committee the matter was considered by the Executive Committee, and it was then suggested by the former Senator Ross MacDonald, who was legal counsel at that time, that every possible step should be taken to see that this was brought to the attention of each and every member of the Order of Foresters, of whom there are some 40,000.

The matter was then dealt with by the Executive Committee, who announced the holding of a special general meeting of the membership, which was ultimately held on February 1, 1968. Notice of that, in accordance with section 5 of the constitution, was duly sent to our subordinate courts and to each of the recording secretaries. The resolutions proposed to be dealt with at the time of the general meeting were outlined and were also sent with the notice.

In addition to that, notice of the general meeting to be held on February 1 was also published in a magazine that periodically goes out to each of the members, so this reached each of the members personally. All this was in accordance with the provisions of section 5 of the constitution, which states that 60 days' notice of such meeting must be given. The notices went out on November 15, 1967, which was in excess of the 60 days' notice required.

In addition to the general beneficiary members there is also a classification of affiliate members. These are individuals who do not belong to a local court; they are not sufficient in number to belong to a local subordinate court of the organization. Section 40 of the constitution, which deals with affiliate members, states that there must be 300 of them in any province before there is an association, say, of the affiliate members. Notice was given to each of the affiliate members in the provinces of Ontario and Quebec on November 13 advising of a general meeting to be held on December 1, 1967. Twenty-five members constitute a quorum of affiliate members, but there was no such quorum at either of the meetings held in Ontario and Quebec. Incidentally, none of the other

provinces is affiliated in this respect. Therefore, there were no appointees of affiliate members because they did not have a quorum.

I would therefore suggest that proper notice was given in accordance with the constitution, and further that it was publicized in the magazine that goes out to each member to ensure that every member had full and adequate knowledge of the meeting on February 1, 1968. The meeting was then held. The resolutions were considered in detail; they were voted upon and received approval of more than two-thirds of the voting members there, again fully in accordance with the constitution. Following the meeting of February 1, a notice was again sent out to each member, and again published in the magazine, advising each member that the resolutions had been passed.

Senator Pearson: What is the percentage of the voting members compared to the regular members?

Mr. Beaudoin: About 5,000 out of 40,000.

The Chairman: Are you ready for the question? Shall I report the bill without amendment?

Senator Benidickson: Senator Isnor and I were just discussing the question as to whether a fraternal benefit society would be subject to the same type and rate of taxes as are imposed on other insurance companies by the budget of October 22.

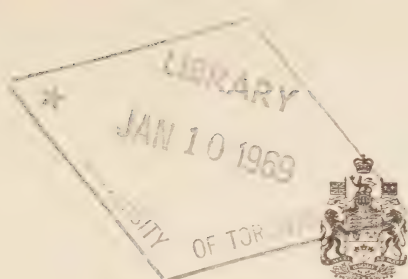
The Chairman: Mr. Humphrys, could you answer that? You do not even know it is going to be law yet, do you?

Mr. Hymphrys: The expressed intention was to make the tax system apply to fraternal benefit societies as well as to insurance companies.

The Chairman: Shall I report the bill without amendment?

Hon. Senators: Carried.

Whereupon the committee completed its consideration of the bill and proceeded to the next order of business.



Government
Publications

First Session—Twenty-eighth Parliament
1968

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 11

TUESDAY, DECEMBER 10th, 1968

Complete Proceedings on Bill C-131,
intituled:

"An Act to amend the Customs Tariff".

WITNESSES:

Department of Industry: Dr. C. A. Annis, Chairman, Machinery and Equipment Advisory Board.

Department of Finance: J. Loomer, Director, Tariffs Division.

Department of Trade and Commerce: M. Schwarzmann, Assistant Deputy Minister. R. Kelly, Deputy Director, U.S. Division, Trade Relations.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Fergusson	McDonald
Aseltine	Gélinas	Molson
Beaubien (<i>Bedford</i>)	Gouin	O'Leary (<i>Carleton</i>)
Beaubien (<i>Provencher</i>)	Grosart	Paterson
Benidickson	Haig	Pearson
Blois	Hayden	Phillips (<i>Prince</i>)
Bourget	Hays	Rattenbury
Burchill	Inman	Roebuck
Carter	Irvine	Smith (<i>Queens-</i> <i>Shelburne</i>)
Choquette	Isnor	Thorvaldson
Connolly (<i>Ottawa West</i>)	Kinley	Vaillancourt
Cook	Laird	Walker
Croll	Lang	Welch
Desruisseaux	Leonard	White
Dessureault	Macdonald (<i>Cape Breton</i>)	Willis—(49)
Everett	MacKenzie	
Farris	Macnaughton	

Ex Officio members: Flynn and Martin.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Monday, December 9th, 1968:

"A Message was brought from the House of Commons by their Clerk with a Bill C-131, intituled: "An Act to amend the Customs Tariff", to which they desire the concurrence of the Senate.

The Bill was read the first time.

With leave of the Senate,

The Honourable Senator Hayden moved, seconded by the Honourable Senator Langlois, that the Bill be read the second time now.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator McDonald moved, seconded by the Honourable Senator Langlois, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

TUESDAY, December 10th, 1968.

(11)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 9.50 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Benidickson, Burchill, Carter, Connolly (*Ottawa West*), Croll, Everett, Flynn, Haig, Inman, Irvine, Isnor, Kinley, Lang, Leonard, Macdonald (*Cape Breton*), Macnaughton, Pearson, Rattenbury, Smith (*Queens-Shelburne*), Welch and Willis. (23)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Upon motion, it was *Resolved* to recommend that 800 English and 300 French copies be printed of the proceedings of this day.

Bill C-131, "An Act to amend the Customs Tariff", was considered.

The following witnesses were heard:

DEPARTMENT OF INDUSTRY:

Dr. C. A. Annis, Chairman, Machinery and Equipment Advisory Board.

DEPARTMENT OF FINANCE:

J. Loomer, Director, Tariffs Division.

DEPARTMENT OF TRADE AND COMMERCE:

M. Schwarzmann, Assistant Deputy Minister.

R. Kelly, Deputy Director, U.S. Division, Trade Relations.

Upon motion, it was *Resolved* to report the said Bill without amendment.

At 11.30 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

TUESDAY, December 10th, 1968.

The Standing Committee on Banking and Commerce to which was referred the Bill C-131, intituled: "An Act to amend the Customs Tariff", has in obedience to the order of reference of December 9th, 1968, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Tuesday, December 10, 1968

The Standing Committee on Banking and Commerce, to which was referred Bill C-131, to amend the Customs Tariff met this day at 9.50 a.m. to give consideration to the bill.

Senator Salter A. Hayden (Chairman) in the Chair.

Upon motion, it was *resolved* that a verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 copies in French be printed.

The Chairman: We have before us for consideration Bill C-131, an act to amend the Customs Tariff.

We have with us Dr. C.A. Annis, Chairman of the Machinery and Equipment Advisory Board, Department of Industry; Mr. J. Loomer, Director, Tariffs Division, Department of Finance; Mr. H. D. McGree, Economist, the Tariff Board; Mr. M. Schwarzmann, Assistant Deputy Minister (Trade Policy), Department of Trade and Commerce; and Mr. C.J. Kelly, Deputy Director U.S. Division, Office of Area Relations, Department of Trade and Commerce. So, with this panel of experts we should be able to get all the information for which we could possibly frame questions.

I do not think this is the kind of bill concerning which we need a general statement from the representatives here. Unless you want to start out with questions, my suggestion would be to go through the bill section by section and let the questions spring as they may. Is that agreeable?

Hon. Senators: Agreed.

The Chairman: Dr. Annis, who is going to carry this section by section?

Dr. C. A. Annis, Chairman of Machinery and Equipment Advisory Board, Department of Industry: Mr. Chairman, possibly I might say a word to start. I think Mr. Loomer

would be the best person to speak about some sections, in that he is the officer of the Department of Finance who is most familiar with the chemical schedule. Possibly I should say a word, or Mr. Loomer or one of the others, about each of these sections, as the chairman calls them.

We refer first to section 1 of the bill. The purpose of this section is to define "wire" for the purposes of the Customs Tariff. Until now the Tariff has not contained any definition whatsoever of wire, and this has led to some problems. It has led to administrative difficulties from time to time.

The Tariff Board some time ago had all the items relating to wire referred to it, as Reference No. 132, and as part of its report the Tariff Board recommended the definitions of wire that are now proposed to be incorporated in the Customs Tariff as a result of clause 1 of the bill.

Senator Kinley: Clause 1 refers to copper wire used in telegraph and telephone facilities?

Dr. Annis: Yes, that would be covered. Also aluminum wire and wire of iron or steel, as would be used for a multitude of purposes, from wire fencing through wire to make nails, etcetera.

Senator Kinley: What are the rates of duty?

Dr. Annis: There are various rates of duty provided for, according to the material of which the wire is made. In general, the rates recommended by the Board, and which are provided for in the schedules to this bill, are somewhat lower than they had been in the past. These reductions were recommended by the Tariff Board as being in the Canadian interest generally, but since this report was received by the Government shortly before the commencement of the Kennedy Round of tariff negotiations, those reductions were not made unilaterally. The reductions were

offered on concessions in the Kennedy Round negotiations.

Senator Kinley: Copper has dropped quite a lot in price, has it not?

Dr. Annis: Yes, basic copper. The price of copper wire, of course, tends to reflect two components: first, the cost of primary copper; and, second, the cost of fabrication.

Senator Kinley: It was in short supply. Is that the reason for the reductions?

Dr. Annis: Not primarily. That may have been a minor element in the Board's thinking, but the Tariff Board is expected to take a long-term view, as I believe was done in the report on this reference.

Senator Pearson: Why was wire singled out and set out specifically in the first section of the bill, compared with all the other imports?

Dr. Annis: That really arises because this bill amends the Customs Tariff, and because they amend the Customs Tariff the provisions of this bill are arranged in the same order as the corresponding provisions in the Customs Tariff. The Customs Tariff starts out with a list of definitions. A number of things were defined—steel plate, and so on—but wire was not. The definition of wire comes first, because definitions are at the beginning of the Customs Tariff.

For the same reason some other things come in an order which may look rather strange, but the explanation is they also are arranged in the same order as the corresponding provisions in the Customs Tariff. It starts out with definitions and goes on to the powers of the Governor in Council and to enumerate the rates of duty that apply in the long schedules appended to the Tariff.

Senator Carter: These figures in section 1—1.25 inches in width, 0.188 inch in thickness—are these international standards?

Dr. Annis: I am not sure how to answer that. They are standards that are widely recognized in the trade in North America. I suspect that the standards in Europe, where the metric system is used, are somewhat different.

May I ask Mr. Loomer if he knows?

The Chairman: Certainly.

Dr. Annis: He does not know either, and I do not think the Tariff Board report refers to

it. It refers to the fact these are standards used in North America.

Senator Rattenbury: It is on the BMS gauge, isn't it?

The Chairman: Do you have any comment on that?

Dr. Annis: I think that is correct, but I am afraid we are not technicians on wire.

Senator Everett: What do you call material that is over half an inch in circular cross-section and is made of copper?

Dr. Annis: That would normally be considered a rod.

Senator Everett: A rod?

Dr. Annis: Yes, sections which are larger than wire are normally rod.

Senator Everett: And rods are defined?

Dr. Annis: Yes.

The Chairman: Shall section 1 carry?

Hon. Senators: Carried.

The Chairman: We come now to section 2. Who is going to deal with section 2?

Mr. J. Loomer, Director, Tariff Division, Department of Finance: I will, Mr. Chairman. This is the first of several sections which relate to the implementation of the new schedule for chemicals and plastics, Schedule D to the bill, which begins at page 100. This schedule flows from the Tariff Board report on chemicals under Reference 120. The revised schedule proposed by the board formed the broad basis of the Kennedy Round negotiations on chemicals and plastics. I might say that in the Kennedy Round Canada agreed to a rate on chemicals of not more than 15 per cent, and on plastics a range of rates depending on the degree of fabrication running from 10 per cent to 17½ per cent.

In the Kennedy Round Canada agreed to introduce the concessions made on chemicals and plastics not later than July 1st of this year. However, this did not prove possible, and an agreement was reached with our trading partners that Canada could postpone the implementation of this new schedule until not later than January 1, 1969.

The Chairman: What is the effect of section 10A?

Mr. Loomer: The effect of section 10A is to give the Governor in Council the authority to reduce, remove, or restore the duties under the tariff items providing for chemicals in Chapters 915, 928, and 929, and for certain items covering plastics in Chapter 939, all of which appear in Schedule D to the bill.

Senator Kinley: These sections are all plastics and—what else?

Mr. Loomer: Chemicals.

The Chairman: Are there any questions on this section? Does section 2 carry?

Hon. Senators: Carried.

The Chairman: Section 3. Who is going to deal with this?

Dr. Annis: I will take that one; the next one relates to chemicals again and Mr. Loomer will speak to it.

Section 3 provides for a technical amendment which is consequential to, and which flows from, the amendments that are proposed to Schedule A of the Customs Tariff Act relating to seasonal rates of duty on some rather minor fruits and vegetables. Section 13 of the present Customs Tariff Act authorizes the Minister of National Revenue to make orders prescribing periods during which certain seasonal duties that are provided for in the tariff shall apply. For example, in the past it has been customary in respect of quite a number of fruit and vegetables to provide for a rather low *ad valorem* rate, usually 10 per cent, throughout the off season, or in some cases free entry through the off season, and then in the Canadian season to have a specific duty of one cent a pound or half a cent a pound, or some such figure depending on the article concerned.

Senator Kinley: That is due to the seasons?

Dr. Annis: Yes. The objective is to provide protection or additional protection during the period when it is most needed.

Senator Kinley: You have discretion there, have you not, as to when you put it on, and lift it?

Dr. Annis: Yes, there is discretion, but the discretion is used for the benefit of the Canadian producers. The Minister of National Revenue prescribes the periods, and he through long established practice has acted upon the advice of the Canadian Horticultural

Council and agricultural interests; in effect, the season is chosen to best serve the Canadian producers.

I might add that the in-season duties have traditionally been specific amounts which, back when prices were lower, were fairly substantial. With the rise in prices in recent years some of those specifics have become no better than ten per cent *ad valorem*.

The Chairman: Unrealistic?

Dr. Annis: Canadian horticultural interests say that. Canadian consumers prefer that they be lower. In any case until now the in-season duties had been specific. Under the amendments in this bill in certain instances provision is made whereby the in-season duty be an *ad valorem* rate of ten per cent.

Now, in the old provision in the Customs Tariff Act the authorizing clause said that the minister may prescribe the specific rates that are set out. But because there are going to be some *ad valorems* that section had to be amended to provide for the substitution of an in-season *ad valorem*.

Senator Kinley: There has been considerable discussion about grapes coming in and interfering with the Canadian market.

Dr. Annis: Yes, sir, that is correct, but they are not affected by the provisions of this bill. In the Kennedy Round no in-season concessions were given on grapes, and this bill does not provide for any significant tariff changes on grapes. In so far as Canadian producers have a complaint, it is about something that was done a long time ago—the coming in free of duty of some grapes that they found competitive.

Senator Kinley: The farmers were all parked here in automobiles, you will remember, a few weeks ago. There was a demonstration.

Senator Croll: No, that was in respect to corn.

Senator Kinley: Yes, corn coming in from the United States, and Africa, I suppose.

Dr. Annis: I think it was corn from the United States in this case. Might I add a word. I said that there was no change affecting the free entry of grapes in this bill that was related to these complaints. That, I think, is correct, but I should also add that there is

one small change affecting grapes, and I think Mr. Loomer can explain it more clearly. Possibly we do not need to. In terms of substance, what I have said is correct. The issue with regard to grapes is not affected by this bill.

Senator Croll: In respect of corn we did make a change recently, did we not?

Mr. Loomer: Yes, a value for duty was put on corn, senator.

Senator Croll: Yes. Would you tell me how you go about doing it with the other partners to the agreement?

Dr. Annis: This can vary a little, but in the first place there are two or three points I should make, and I think Mr. Loomer can add to them. As far as the rate of duty on corn is concerned, it is 8 cents a bushel, and that is bound by an old trade agreement. That binding is continued without change in these provisions, so that the rate of duty was not affected by this value for duty. The second element in the situation is that the GATT places certain restrictions on the ability of contracting parties to apply non-tariff barriers, and there is also a provision whereby in case of serious injury resulting from commitments a country may in special circumstances, in effect, escape from or modify its commitment. The Canadian action in applying a special duty on corn is a case in point. It is a case where what we did was a derogation from our commitments and consequently our trading partners had to be consulted. I think Mr. Loomer, who was involved in those consultations, probably would like to add something to this.

Mr. Loomer: We did enter into negotiations with the United States, which was, of course, the supplier, and we came to an agreement with them on compensation which involved an acceleration of some Kennedy Round reductions, and these were put in by order in council and this resolved the problem.

Senator Croll: Yes but I understood that they were very unhappy about it and had complained.

The Chairman: Do you mean the United States?

Senator Croll: Yes, the United States. I saw a statement by an official. I do not know what position he has.

Mr. Loomer: That may be right. They were somewhat unhappy about it, but we did meet

with them and came to an agreement which they accepted as adequate compensation for the action on corn.

The Chairman: What was the action you took on corn?

Mr. Loomer: A value for duty.

Senator Croll: Can you think of an instance where one of our partners took similar action on something that is important to us?

Dr. Annis: There have been cases. Mr. Schwarzmann would be the best man to speak to that. He is very much concerned with the export side.

Mr. M. Schwarzmann, Assistant Deputy Minister, Department of Trade and Commerce: There have been cases where other countries have taken special action of this kind. One case that comes to mind is that some years ago there were restrictions placed on lead and zinc by the United States under the articles of the GATT, which provide for emergency action of this kind. On the whole, the general approach or resort to these provisions is to limit them to as few cases as possible.

The Chairman: Those restrictions that you are talking about on lead and zinc were restrictions on exports?

Mr. Schwarzmann: Imports into the United States.

Senator Croll: Is it fair for me to assume that this is an escape clause within the act?

Dr. Annis: There is an escape clause within the provisions of the General Agreement on Tariffs and Trade to which we are a party, and we, or any other country, can, if we establish our case, resort to that escape clause. It is not an easy hurdle and perhaps it is in the general interests that it be not easy, or, in other words, that people be required to pay for their sins in the sense of the derogations from their commitments.

Senator Croll: Over the period of GATT has that escape clause been used to any extent by our friends, or ourselves?

Dr. Annis: To a significant extent, but not to an extent which would endanger the agreement. The United States is a case in point. The United States has a system whereby appeals for escape clause action may be made to the United States Tariff Commission, and quite a

number of such appeals have been made over the years. The majority of such cases have been, in effect, rejected on the basis of the findings of the Tariff Commission. The Tariff Commission has made recommendations to the President in a number of instances recommending increases in tariffs as the result of escape clause actions, and in some instances the President has, by proclamation, raised duties—but such cases are rare. If you want to pursue this in detail I should mention that Mr. Kelly is an expert on the United States tariff.

Senator Croll: No, no, I am quite satisfied. Here is the question which follows from that. You say they have a procedure whereby they can appeal to their tariff board, who can make a recommendation?

Dr. Annis: Yes, to their tariff commission, which is the title used.

Senator Croll: We have no such procedure. Ours must go to the minister?

Dr. Annis: Our procedure is not the same, but in some respects it is more flexible. An aggrieved party in Canada can take his case to a member of the Government, to a minister.

Senator Croll: And then the minister can order that reference, if he wishes?

Dr. Annis: If he chooses, the Minister of Finance may ask the Tariff Board to look into the facts of the case. But it is not necessary for him to do so. Under our system, the Government does not need to refer anything to the Tariff Board; it can make a decision without doing so, if it should wish.

Senator Croll: The Americans have a direct appeal, as of right?

Dr. Annis: Yes.

Senator Croll: And ours is a matter of Government policy?

Dr. Annis: I am not sure whether that is a valid distinction. It seems to me that any Canadian citizen could argue that he has a right of appeal to his government, and that if he does so, his case is considered.

Senator Croll: I appreciate that, but there is a difference between an appeal to the Tariff Board, which is a specialist in that sort of work and can go into it, and an appeal to a minister, who may have his department to

give an opinion but may have quick action, which is the difference.

Dr. Annis: Yes, sir.

Senator Burchill: Do I understand that they by-pass the Tariff Board in that case, that the citizen could by-pass the Tariff Board in going to the minister?

Dr. Annis: In a case of this sort, there is no provision for anyone except the Minister of Finance or the Governor in Council making a reference to the Tariff Board. There is another area in which anyone has a right of appeal to the Tariff Board, this is in matters affecting customs classification. Any importer has a right to carry an appeal from a decision of the Department of National Revenue, on classification or rate of duty, to the Tariff Board.

Senator Burchill: Thank you.

Senator Lang: To follow Senator Croll's line of questioning, to get it clear in my own mind, in a situation where a value for duty is established, what is the act that does it—is it an administrative act, is it by order in council, is it by amending the Customs Act?

Mr. Loomer: It is the Customs Act, section 40A(7)(c), which provides authority for establishing a value for duty.

Senator Lang: By the minister.

Mr. Loomer: Yes, not under the Customs Tariff; it is in the Customs Act.

Senator Connolly (Ottawa West): I wanted to ask how many times Canada has used the escape clause?

Dr. Annis: Not very often. The situation is a little muddy, in that there are a few occasions on which we have taken emergency action on such things as applying a value for duty to some item without formally lodging an escape clause request in Geneva. But we have done this very often.

Senator Connolly (Ottawa West): You do it very much on the basis of danger of dumping?

Dr. Annis: Yes; if there is danger of dumping, this might be a factor, although there is a separate provision relating to dumping.

Senator Connolly (Ottawa West): An allegation of dumping?

Dr. Annis: This may be the case. If a country is in difficulty over implementing concessions it has given, there are available to it two potential escape routes. One is the serious injury clause, article 19 of GATT, which we have been talking about. This can be used without advance consultation. That can be done afterwards. It is used in cases of extreme emergency.

There is another route, the right to renegotiate a concession. If one sees a problem coming but it is not so urgent that one needs to act immediately, use can be made of Article 28 of GATT, which provides an avenue whereby one may renegotiate a commitment. We in Canada have used that occasionally. There were two important cases. One involved a long-term problem on potatoes, where we renegotiated our commitment to enable us to impose a duty. Another instance was where we renegotiated our commitments on the main item relating to cotton fabrics. Quite a long time ago, there had been a provision whereby we had three different rates of duty, depending on the value of the fabric. On anything valued at more than 80 cents a pound the rate of duty was quite low. There had been a time when 80 cents a pound was a very high priced fabric, outside the range of Canadian production. With the change in values, it no longer remained the case, and we had a long-term problem. Canada renegotiated its commitments and gave compensation in other areas to obtain relief from this commitment. That was done through the application of Article 28. This is the route that we have used in circumstances where the United States probably would have used the escape clause.

Senator Connolly (Ottawa West): That answers it. Are any of the so-called developing countries parties to GATT?

Dr. Annis: Yes sir.

Senator Connolly (Ottawa West): Many?

Dr. Annis: Yes, a good many. In fact, about 30 of the developing countries—the underdeveloped and developing countries—participated in the Kennedy Round negotiations on some basis or another. Some of them participated to the extent of signing an agreement providing that they would make reductions in tariff rates. Others participated on a basis which came closer to saying “this is what we would like to get, and if we get it

we will do the best we can”. There was quite a range in the extent of involvement. As I say, some of them made definite tariff commitments. Jamaica is an example.

Senator Connolly (Ottawa West): In that respect, they complained a great deal about the fact that their native commodities cannot get in the markets of say, the OECD group. Would you say that GATT has helped those underdeveloped countries?

Dr. Annis: I think that GATT has helped them but that the help is certainly—in my view and I feel in the view of impartial observers—far from adequate to meet their real needs. In the Kennedy Round some things were done for them which they would find helpful, and some other things were considered but not accomplished. A good example of this is in the field of tropical products. The Canadian delegation, on instructions from the Government, proposed that all contracting parties go as far as possible towards complete free trade in all tropical products. We removed our duties from coffee and from cocoa beans and cocoa butter. We were able to do this. . .

Senator Connolly (Ottawa West): What about groundnuts?

Dr. Annis: Groundnuts were free already in our case.

The Chairman: You will still be able to get your peanuts, Senator Connolly.

Senator Connolly (Ottawa West): For so many years I have heard them talking about groundnuts and it was not until recently that I realized they were speaking of peanuts.

Senator Croll: Among other things we heard a great deal about the complaint from Jamaica about sugar. I don't understand what the situation is. Will you explain it to me?

Dr. Annis: I am not sure I am competent to give a precise explanation.

Senator Croll: Well, I know nothing about it, so you will be able to tell me something about it.

Dr. Annis: There are two or three elements in this situation regarding sugar that we might mention. This may be helpful, but it may not be an adequate explanation from your point of view. As far as Canadian tariff

is concerned there is nothing in this bill that affects the rates of duty on sugar, and this is largely true of other countries as well. In the Kennedy Round sugar did not get very much into the negotiations. This was due to a number of factors but largely because of special arrangements that are embedded in legislation in different countries; for instance, the Sugar Act in the United States, and the Commonwealth Sugar Plan that is so important in Britain, and other special European arrangements on sugar. The basic difficulty regarding sugar is the fact that in relation to the import requirements of importing countries, the big suppliers in tropical areas have too much to supply. This has led to a disorganized market where prices have tended to be low.

The Chairman: But, Dr. Annis, you know so far as these Commonwealth countries are concerned that they enjoy a special arrangement as to a certain percentage of their products with the United Kingdom under the United Kingdom sugar arrangements under which the United Kingdom pays these colonies and Commonwealth countries higher than the world price for part of their product. When they start talking about competing in the world market and the price not being high enough, they should average out the higher than average price that they get in the special markets where outside concerns do not have the same advantage.

Dr. Annis: As far as Canadian arrangements are concerned, we provide a substantial tariff preference in favour of Commonwealth countries. Our preferred suppliers, Jamaica and other West Indian countries together with Australia, are able to take advantage of the greater part of the preference of \$1.00 per cwt. which we grant them. To some extent it is reflected in a lower price in Canada to the Canadian refinery. But about 85 per cent of the dollar preference goes into the pockets of the preferential suppliers.

Senator Kinley: Have we stopped trading with Cuba?

Dr. Annis: No, but in fact our imports from Commonwealth sources largely supply what we need.

Senator Kinley: We used to get a lot of sugar from Asiatic islands. I remember during the war this was the case.

Dr. Annis: In recent years we have not imported much from there apart from Fiji and Australia.

Senator Kinley: But we don't deal with Cuba now?

The Chairman: Well, there is the odd purchase.

Senator Kinley: I don't think they have an agreement with the United States any more where they get a preference.

Senator Croll: What happens in the case, if there is such a case, of countries that are constantly running to the escape clause?

Dr. Annis: I think it correct to say that there are not any countries running constantly to the escape clause. There has been sufficient resort to it from time to time to cause a little worry about it, but it has not in fact been a major problem. Possibly it would be closer to the truth to say that it has been a useful pressure valve.

The Chairman: Is section 3 carried?

Hon. Senators: Carried.

Senator Benidickson: Mr. Chairman, on the matter of the mechanics in the drafting of the bill, and I should remember this because I used to have something to do with it, we are asked here to make certain amendments to customs tariffs with respect to vegetables largely in this section. My question is why are we provided in this draft with a very extensive Schedule B giving a tremendous number of items in this category relating to vegetables and fruits and so on, and we have descriptions of the present rates applying to a great number of these items such as might be found on page 24 of Schedule B, but many of the items referred to are not there at all. Why are we given so much information in Schedule B and have no information as to the articles or the items that are specifically subject to amendment in section 3?

Dr. Annis: I think that the basic explanation is that Schedule B sets out exactly what will go into the Customs Tariff, the revised provisions that will appear in the Customs Tariff. It was necessary to put it in with the full language. As regards this amendment, it is really by way of reference, as I mentioned earlier, and the changes are consequential to the changes in Schedule B.

Senator Benidickson: But I do not find anything in Schedule B to indicate to me what they are really including in an item like 8702-1

The Chairman: You would have to go to the Customs Tariff. What they are saying is that you can apply an *ad valorem* rate instead of a specific rate.

Dr. Annis: As you can see there is a list of vegetables here, and you can read it off.

Senator Benidickson: I wonder why we are given so much detail in Schedule B and have no details of the items that are subject to the change in the law proposed.

Dr. Annis: I think the technical explanation is that from the point of view of the legal draftsmen, it was not necessary. However maybe we slipped up there and should have done it in a different way.

Senator Croll: How big would the book be if you were to cover all the items?

The Chairman: It would reach from here to Toronto.

Dr. Annis: It would indeed be very large, although these amendments affect more than half the dutiable items, so it is a pretty substantial part of the total.

The Chairman: Dr. Annis has pleaded extenuating circumstances, can we go ahead?

Senator Benidickson: Well, there you have 8702-1 to 8707-1. Could you indicate what products are involved in that specific revision? Are they carrots or mushrooms or what are they?

Mr. Loomer: Shall I just run through them, senator?

Senator Benidickson: Yes, please.

Mr. Loomer: Tariff Item 8702-1 covers asparagus; 8703-1, green beans; 8704-1, beets; 8705-1, brussels sprouts, 8706-1, cabbage; 8707-1, carrots; 8708-1, cauliflower; 8709-1, celery; and 8710-1, corn on the cob.

Senator Benidickson: I am just pointing out these are consumer items, and we are really adding protection to our producers in respect of these items. Is that not correct?

The Chairman: This is a seasonal protection.

Mr. Loomer: No, this section does not add new protection.

Senator Kinley: You have not mentioned blueberries.

Mr. Loomer: They are under fruit. There was always a provision for applying seasonal duties on these items.

The Chairman: All I was saying was that we are talking about seasonal duties at the moment.

Mr. Loomer: Yes.

Senator Carter: Why are some included in Schedule B and others left out?

Dr. Annis: Schedule B includes those things on which we offered some tariff reduction or change in the Kennedy Round. On the most important fruits and vegetables there is no change. This was recognized as being a sensitive area, particularly as regards the in-season rates, and an attempt was made to keep in mind the interests of Canadian horticultural producers.

Senator Everett: On Schedule B, page 26 you have Tariff Item 8731-1 n.o.p. Does that designation apply only to the immediately preceding item?

Mr. Loomer: It applies to all items that are not specifically provided for under the fresh vegetable heading.

Senator Everett: How far back do I go in the schedule?

Mr. Loomer: To 8705-1, which is on page 24. Just above that item is the general heading.

Senator Everett: 8705-1, it would start there?

Mr. Loomer: Yes.

Dr. Annis: It starts from that general heading, "Vegetables, fresh, in their natural state, the weight of the packages to be included in the weight for duty."

Mr. Loomer: In the Customs tariff it starts at tariff item 8701-1, artichokes.

The Chairman: Does this section carry?

Senator Connolly (Ottawa West): Mr. Chairman, I understand that commercial users of sugar in Canada have maintained that with a free market they are able to buy adequate supplies, and the price they pay for the sugar is a dollar less than the price the commercial users of sugar in the United

States pay, because of this so-called free market.

The Chairman: That is not exactly the situation, senator. The U.S. has a protected market for sugar, to protect its local industry, both cane and beet; and any deals it makes with other countries are at preferred prices, in line with what the domestic price is.

Dr. Annis: I think that is right. The only point I would add is that if a Canadian commercial user is going to export his product he will be in a position to buy MFN sugar rather than Preferential.

The Chairman: Or full duty, because he gets a drawback.

Dr. Annis: Yes, because he gets a drawback, and he will then get a better bargain than the other user.

The Chairman: Shall section 3 carry?

Hon. Senators: Carried.

The Chairman: Section 4?

Mr. Loomer: This section would give the Governor in Council authority to prescribe rules and notes for the section of the new tariff schedule beginning on page 103, which is based on the Brussels nomenclature. This is the system of tariff classification used by most major trading countries, with the exception of the United States.

Under the Brussels nomenclature closely related goods are grouped under headings and the headings are grouped into chapters. The rules and notes, which are an important part of the nomenclature, define more precisely the scope of the various headings.

The Board recommended that these rules and notes be adapted for Canadian use, to take account of the fact that most of the Canadian tariff is not based on the nomenclature. The Board proposed these rules and notes be implemented by Order in Council. They have to come into effect at the same time as the new schedule. I might mention that the chemical industry urged the adoption of the Brussels nomenclature.

The Chairman: Any questions? Shall section 4 carry?

Hon. Senators: Carried.

The Chairman: Section 5?

Mr. Loomer: Section 5 is divided into two parts. The first deals with the proposed new section 18 of the Customs Tariff, and it relates to the budget of November 30, 1967, in which the rates of excise duty on domestic spirits and beer were increased effective the following day. This section, the proposed new section 18 of the Customs Tariff, proposes that effective December 1, 1967, the customs duties on imported spirits and beer be increased by an amount equal to the increase in the levy on domestic products—namely, \$1.25 per proof gallon on spirits, and 4 cents per gallon on beer. This is the purpose of the first part.

The Chairman: It is only operative for the month of December?

Mr. Loomer: Yes.

The Chairman: Shall this section carry?

Senator Everett: On page 34 there is a duty applied to tequila under Item 15640-1; and on page 15 there is a duty applied to tequila under Item 15640-1. Could you tell me why there are two?

Mr. Loomer: This bill, amalgamates two different sets of resolutions. The one on the earlier page relates to the budget of 1967; and the one on page 34 relates to the coming into force as of January 1, 1968 of Schedule B.

Senator Everett: The preferential rate there is \$5 per gallon, and the 1968 is \$1 per gallon?

Mr. Loomer: It is \$5 plus \$9, which comes to a total of \$14.

Senator Everett: Yes.

Mr. Loomer: Effective January 1, 1968, the offset to the excise duty on domestic liquors was separated from the protective element of the customs duties. That is provided for in the second part of section 5. Therefore, in the schedule you now see the net protection rather than the protection plus the amount of the domestic excise duty on alcohol.

Senator Everett: Are you saying it is the same?

Mr. Loomer: Yes.

The Chairman: The sum total is the same?

Mr. Loomer: Yes.

The Chairman: Shall section 5 carry?

Hon. Senators: Carried.

The Chairman: The next section is section 6. Who is taking that?

Mr. Loomer: Section 6 reintroduces, without change, proposals which were originally introduced in the 27th Parliament in connection with the June 1, 1967, budget. The proposed package of changes set out in Schedule A of the bill have been in effect on a provisional basis since June 2, 1967. Briefly, this section provides for the establishment of six new statutory tariff items, the amendment of seven existing items, and the continuation without change of five temporary items which otherwise would have lapsed on June 30, 1967 or December 31, 1967.

Senator Croll: What are the six new items?

Mr. Loomer: Tequila is one of them.

The Chairman: That makes one breathe easier, does it not—although, I am not sure it does.

Mr. Loomer: The first item on page 15 is yeast. Tequila is the second. Then, there are 35240-1 moulded shuttle blanks; 46241-1 microfilm reader-printers, on page 16; and 42711-1 front-end loaders.

The Chairman: There is one more.

Mr. Loomer: And drugs, n.o.p., item 22003-1, page 15. Those are the six new items.

The Chairman: Does this section carry?

Senator Croll: I have just come across this, and I should like to ask why you tax church vestments. I am referring to Item 56400-1.

Mr. Loomer: This is a reduction in the duty on parts of church vestments.

Senator Croll: Have you always had it?

Mr. Loomer: Yes. In fact, what has been done here is to make a provision for parts of church vestments which were dutiable at higher rates, and add them to this item.

The Chairman: Does this section carry?

Hon. Senators: Carried.

The Chairman: Section 7?

Dr. Annis: Perhaps I should speak to this. I do not know whether I should say anything or not, because this is the main clause relating to the application of the tariff reductions

provided for in the Kennedy Round, and if one embarks on this it will be necessary to say a great deal. Since your Chairman discussed this in some detail last night it would seem to me to be superfluous for me to repeat what he said I would not do it as well.

The Chairman: I will tell you what I will do. I will assign this as supplementary reading for the members of the committee in their own time. Shall this section carry?

Hon. Senators: Carried.

Senator Smith (Queens-Shelburne): I wonder, Mr. Chairman, whether this would be a good time at which to have a short statement from the witness in regard to the changes in the tariff structure on fish entering this country, and a statement in regard to the effect of the lowering of the rates of customs duty on entry into the United States on our exports of fish products.

The Chairman: Do you know that the United States agreed to take off its import duties on fish?

Senator Smith (Queens-Shelburne): I beg your pardon?

The Chairman: The United States, as part of this arrangement, agreed to take off its duties on fish where the rate was five cents or under. Is not that correct?

Dr. Annis: It was five per cent or under. I think probably I could in two or three minutes say something that might help to some extent. This was an important part of the agreement, and it is an area in which we thought we did very well as far as the tariff arrangements are concerned. I know that some portions of the Canadian fishing industry have difficulties, but they are not as a result of this agreement. In fact, I think a difficult situation is being eased by the concessions which we got in this area, and they are very important.

The United States, which is by far and away the principal Canadian market for fish, is removing completely its duties on fish products, mainly ground fish, which were previously five per cent *ad valorem* or less. In 1966 the value of imports into the United States of Canadian fish in that category was over \$91 million, and that constituted a very large part of our production of fish. This removal of duties covers frozen and salted fish from both the coastal and inland fisheries.

Apart from this, there are United States reductions—usually 50 per cent reductions—on a further three-quarters of a million dollars worth of Canadian fish exports. Reducing it to percentage terms, a little more than 75 per cent of Canadian dutiable exports of fish to the United States are favourably and beneficially affected by the concessions.

There was one disappointment in this connection. The United States did not make any change in the access for groundfish fillets, but with that exception we got either a 50 per cent reduction or, in the case of those rates that are already not more than five per cent, complete free entry—pretty well down the line. The removal of those duties is being staged over five equal steps ending in 1972.

Senator Smith (Queens-Shelburne): This point is important to me. You said there was no change as a result of the agreement in respect of groundfish fillets, whether they are frozen fillets or in the form of blocks.

Dr. Annis: I think that that is correct, but Mr. Kelly should answer that.

Mr. C. J. Kelly, Assistant Director, U.S. Division, Office of Area Relations, Department of Trade and Commerce: The ground fish frozen fillets—the access was not changed as it was subject to quota in the United States, and it was exempt from negotiation under statute in the United States. The blocks, I think, were negotiated.

Dr. Annis: Yes, I think that that is right.

Senator Smith (Queens-Shelburne): Perhaps I might get a little more information on this point. I bring up this question because of inquiries I have received in regard to the effect of the Government of Canada subsidizing in some indirect fashion the production of ground fish fillets in both forms. That does not change anything with respect to the escape clause, because there has been no change in the tariff?

Dr. Annis: That is right. However as regards the matter of whether we are subsidizing, and all the problems there, I should say that we are not equipped to deal with it here. The Minister of Fisheries made a statement on this subject when speaking on his estimates in the house one day last week. I think that is the best source of an authoritative statement on the subject. I do not think any of us here are equipped to go into it.

Senator Croll: What does the term "block" mean?

Mr. Kelly: A block includes fillets and pieces, and they are all frozen into blocks of over ten pounds. They are shipped into the United States in that form, and then are used either for processing or for other purposes.

Senator Smith (Queens-Shelburne): They are used for making fish sticks.

Senator Kinley: They are frozen.

The Chairman: Does this section carry?

Senator Benidickson: I raised a question last night, Mr. Chairman, on which you tried to help, and I would like a little more clarification of it. My point is that, as we all know, over a protracted period the experts or officials of many countries participated in trying to work out this Kennedy tariff agreement. My question was: To what extent have parliaments or legislatures reneged on or repudiated the agreements that were arrived at by the experts?

Dr. Annis: Possibly I should comment on that. It may be that Mr. Kelly can add to it. There are two or three points that one might make. The first steps in relation to implementation for a number of countries, including the United States, Canada, Australia, New Zealand, South Africa and Switzerland, had to be taken on January 1, 1968. Every country that had commitments as of that date met them, and met them in full. The second date involved was July 1, 1968. A number of countries, including the European Economic Community, Japan and others, agreed that in their case, rather than making a one-fifth cut January 1, 1968, and another one-fifth January 1, 1969, they would make two-fifths of the total reduction on July 1, 1968. Every country that had such a commitment met it, and met it in full. There had been a little bit of worry about Japan in this connection, whether or not the Japanese Diet would be in a position to approve their changes to meet the deadline, but in fact they did. Therefore, the record to date is that everyone has met all their commitments.

With regard to the tariff reductions, it would seem there is every reason to expect that this will continue to be the case, and that as further reductions are called for on January 1 of next year and so on to 1972 they will be met.

The one point where I suppose there is more of a question mark relates to the American selling price legislation in the United States in chemicals. This is a bit apart. In the case of the United States, as far as meeting the tariff commitments are concerned, the President was given authority in advance by Congress, so it is a presidential authority. The necessary Congressional action has been taken; it was taken in the Trade Expansion Act of 1962.

Senator Benidickson: He was given a certain number of years' authority?

Dr. Annis: Yes, and they just met the deadline. The authority expired on June 30, 1967.

The Chairman: Shall section 7 carry?

Hon. Senators: Carried.

The Chairman: We now come to section 8.

Mr. Loomer: Section 8, and the related schedule C to the bill, involves in part a housekeeping or tidying up operation relating to substantive changes proposed by section 7 dealing with the Kennedy Round. However, this clause and schedule C also implement a number of recommendations of the Tariff Board which were not involved in the Kennedy Round negotiations. The first substantive change is item 40920-1, which appears on page 94, which brings into effect the Board's proposal for free entry for machinery and equipment used in grading and packing fresh fruit and vegetables. This is followed by the new schedule of tariff items proposed by the Tariff Board in its report on Reference 130, which related to machinery and apparatus for the mining industry. The items here are 41001-1 to 41045-1. There were some renegotiations with regard to these items.

Senator Kinley: Could I have an interpretation of that phrase "a class not made in Canada"?

The Chairman: The courts have been busy on that at times.

Senator Kinley: Yesterday in your speech, Mr. Chairman, you talked about it as an item of protection, "a class not made in Canada". How is that put up? Is it if anybody in Canada makes it, or if half the quantity is made, or if they supply the market? How do you interpret that phrase?

Dr. Annis: Maybe the officials of the Department of National Revenue may wish to speak to this, but I think I might start. The phrase in connection with certain items of "a class not made in Canada" has appeared in the customs tariff for a long, long time. In fact, it made its first appearance away back in the 1870s. It has become very important since 1936 when it was applied to the main machinery items. In connection with its interpretation, the legal basis of the interpretation is provided for in an Order in Council. An Order in Council was passed in 1936, which lays down the rule that goods shall not be considered to be of a class or kind made in Canada unless the Canadian production is sufficient to supply 10 per cent of the normal Canadian consumption.

Senator Kinley: Is it 10 per cent? I thought it was 5 per cent.

Dr. Annis: It is 10 per cent. That is the basic rule. The interpretation of that rule is a matter initially for the Department of National Revenue. When interested parties feel they had a grievance over the interpretation of the Department of National Revenue they have a right to take their case by way of appeal to the Tariff Board. There are a number of Tariff Board decisions which are relevant. In one or two cases it has gone to the Exchequer Court, and once to the Supreme Court.

Senator Kinley: You say 10 per cent?

The Chairman: No, that is what the Order in Council says.

Senator Kinley: How is that 10 per cent arrived at?

Dr. Annis: It is in terms of 10 per cent of the normal Canadian consumption. It is a matter for administrative and court determination as to what is "normal Canadian consumption". With respect to a good many products, it is fairly easy to define it, at least in theory, taking a one year period or a longer period if that is appropriate and figuring out what the consumption is. In the past it has become difficult in cases where one is dealing with "one of a kind machines", such as newsprint machines or something like that, where you may have one or two ordered one year, none the next and so on. This has been a very difficult problem, which I do not think we should attempt to go into further now.

The Chairman: Shall section 8 carry?

Hon. Senators: Carried.

The Chairman: Passing to section 9, this looks like one for Mr. Loomer.

Mr. Loomer: This is the section that provides for the deletion of a number of existing items covering chemicals, plastics and related products and the introduction of a new schedule D to the bill based on the recommendations of the Tariff Board in its report on Reference 120. The new items on pages 100 to the middle of page 103 are written in terms of the present Canadian tariff nomenclature. These items include such things as minerals and compounds derived from natural deposits by non-chemical means. Many of these products fell within the terms of reference to the Tariff Board but are excluded by the "Brussels Nomenclature" from the chapters providing for chemicals and plastics, namely chapters 915 to 939. Accordingly the Tariff Board made separate provision for such products in the proposed schedule.

The Brussels Nomenclature classification system is used beginning on page 103 under the heading "Group XII—Products of the Chemical, Plastics and Allied Industries".

The Chairman: Shall this section carry?

Hon. Senators: Carried.

The Chairman: Section 10. Who carries this one?

Mr. Loomer: This is an amendment to a drawback item in Schedule B to the Customs Tariff. The drawback item 97052-1 is amended to permit the payment of drawback on a broader category of equipment, including heat-treating and vulcanizing apparatus for the manufacture of rubber parts and tires for motor vehicles. Also the provisions of the item are extended to the following additional end-uses; the manufacture of cutting tools and patterns for the automotive industries, and the manufacture of motor vehicle accessories. These changes will assist Canadian automotive parts, accessory and tooling manufacturers in keeping their costs down.

The Chairman: Shall this section carry?

Hon. Senators: Carried.

Senator Croll: These items will help to keep their costs down.

Mr. Loomer: Yes sir.

Senator Croll: You did not add anything to keep their costs down to the consumer. That was not in there was it?

Mr. Loomer: I am not quite sure how you write that into a Customs Tariff sir.

The Chairman: That belongs to another department.

Section 11. I think this is also a drawback item, Mr. Loomer.

Mr. Loomer: This clause provides for an amendment to three drawback items which are set out in Schedule F to the bill. The changes in two of the items are consequential to the recommendations of the Tariff Board on mining machinery. The third is consequential to the renumbering of certain tariff items in Schedule A to the Customs Tariff.

The Chairman: Section 11 is next to the last of the drawback items. Does this clause carry?

Hon. Senators: Carried.

The Chairman: Section 12, the last drawback item.

Mr. Loomer: This section provides for the deletion of two drawback items, 97016-1 and 97065-1, the introduction in Schedule G on page 127 of a new item 97023-1, and amendments to the wording of two existing drawback items.

Senator Benidickson: What are the items?

Mr. Loomer: The items being deleted are 97016-1...

Senator Benidickson: That is in the section. I meant what are the products? I can find that in the schedule, I believe.

Mr. Loomer: The new item 97023-1 relates to ethyl alcohol. For the two items being amended, 97026-1 and 97046-1. the Tariff Board recommended some changes in wording in its report on reference 120.

The Chairman: Shall this section carry?

Hon. Senators: Carried.

The Chairman: Now we turn to Section 13.

Mr. Loomer: Section 13 relates to Schedule C to the Customs Tariff which prohibits imports of certain goods into Canada. This is Schedule H to the bill. The amendment is to the item which prohibits the importation of margarine or other similar substitutes for

butter. For over 80 years there has been an unqualified prohibition on the importation of margarine or other similar substitutes for butter. The proposal now is to qualify this prohibition by adding the words "unless in any particular case or class of cases exempted from the provisions of this item by a regulation of the Governor in Council."

Senator Croll: Was there ever any importation of margarine?

Mr. Loomer: It was prohibited.

Senator Croll: This gives you the same right to permit it in certain circumstances?

Mr. Loomer: Yes.

The Chairman: Manufacture is prohibited.

Senator Kinley: Manufacture was prohibited for a long time. You went to the Privy Council office.

The Chairman: Shall Section 13 carry?

Hon. Senators: Agreed.

The Chairman: Section 14. This deals with the commencement date of these various items. Dr. Annis dealt with that in his original statement. Is there anything more you want to add?

Dr. Annis: I do not think that it is really necessary. I could repeat the point, that the reason for more than one commencement date follows from the fact that there are included here some proposals, just a few of them, that originated in the budget of June 1, 1967 and which were provisionally brought into effect then. Other commencement dates began later, as stipulated in the various resolutions.

Senator Croll: If we pass this bill in the Senate, then we have met our commitments in time?

Dr. Annis: Yes, sir.

The Chairman: Shall Section 14 carry?

Hon. Senators: Agreed.

The Chairman: Section 15.

Senator Leonard: If this is the last section, might I ask a general question? This might have been dealt with; I was out of the room, and for that I apologize. I was wondering about the new 50 per cent deposit required in the United Kingdom on imports and its relationship to GATT. Is it within the terms of

GATT or is it a loophole? I wonder if the witness, Dr. Annis, might say something about that?

Dr. Annis: I am not really very well qualified to do so. One comment that I might make is that the GATT has certain provisions for emergency action which countries may take if they are in balance of payments difficulties.

It was under those provisions that, in the early stages of the GATT, a great many countries imposed quantitative restrictions, quotas, for balance of payments reasons. Those have mostly disappeared. In part they have disappeared because of the pressures that the delinquent country's trading partners were able to bring upon them in the GATT.

As regards the special action which the United Kingdom has taken in the current problem, it is a matter which has been and will be discussed in the GATT context. The only comment I could usefully make is that the British will be justifying their position there and undoubtedly they will have critics there. This is a forum in which, in private, a country's trading partners can put their case and ask that their interests be looked after, or at any rate safeguarded to the extent that is possible in the circumstances.

Senator Croll: Has France taken any such action as Britain?

Dr. Annis: France has taken some actions. I am not sufficiently familiar with the details.

Senator Croll: Or any other of the common market countries, to your knowledge?

Dr. Annis: Germany, of course, has taken measures which are designed to slow down their exports and encourage their imports. This is an alternative to a revaluation upwards of their currency—which a good many have urged upon them as being a course of action which would be appropriate in the circumstances.

The Chairman: In Germany they have withdrawn numbers of their subsidies, have they not—subsidies on exports?

Dr. Annis: They have gone beyond that.

Senator Kinley: Has Germany still got the two currencies, one for internal use and one for export?

Dr. Annis: No, sir they have a single currency now.

The Chairman: Section 15.

Dr. Annis: Section 15 would confer upon the Governor in Council authority to postpone the coming into force of tariff reductions, those that are dated next January 1 or a following date, if circumstances warranted. This authority could be used on either a selective basis or a general basis, if there were, for example, defaults by one of our trading partners, a failure on their part to meet their commitments. This is an authority which we hope will never be used, but it is something which could be used to safeguard our position in the event of trouble.

Senator Croll: You never had this authority before under GATT?

Dr. Annis: This is in our own legislation, not in GATT.

Senator Croll: But you never had this authority before?

Dr. Annis: Not in this way, not in a bill like this. I suppose in one sense this sort of authority has existed in the past because reciprocal trade agreements have been implemented by order in council rather than by legislation. If tariff reductions were made by order in council, then the Governor in Council would automatically, under the terms of the Interpretation Act, have the right to withdraw them.

The Chairman: That power is under section 10 of the Customs Act, the reciprocal agreements. They are there by the Governor in Council approval, is that right?

Dr. Annis: That is right.

The Chairman: So what the Governor in Council can do, the Governor in Council can undo. I suppose that is the principle. If the party in the reciprocal agreement does not deliver as intended, why, they can always reverse.

Senator Lang: I am trying to understand this procedure. May I take a specific example? Under GATT, a 50 cent a ton duty on bituminous coal was to be reduced 10 cents a year, starting January 1, 1968, 10 cents a ton the next January, and so on. How was the 10 cents a ton reduction of January 1, 1968 effected?

Dr. Annis: It was effected pursuant to the terms of the resolution which had been introduced in the House of Commons. It is a long-

established tradition that the Government may put into effect provisionally pending approval by Parliament, budgetary changes, tax changes, and that sort of thing. It is done on a provisional basis.

A problem in this connection arose when Parliament was dissolved without the legislation having been passed. When Parliament was dissolved without the legislation having been passed it was necessary to resort to a rather unusual device. It was an order in council passed pursuant to section 22 of the Financial Administration Act maintaining in effect the reductions in duty which previously had been put into effect pursuant to the resolution.

The Chairman: Shall section 15 carry?

Hon. Senators: Carried.

Senator Lang: I presume that this plan of tariff reduction on coal is embedded in here somewhere.

Dr. Annis: Yes, sir, if you look at the right place.

Senator Lang: In what form is it? Does it automatically go down 10 cents next January, and a further 10 cents the following January?

Mr. Loomer: If you look at the top of page 87, sir.

The Chairman: This will assure you of heat at lower prices.

Senator Lang: Or maybe light.

The Chairman: Or maybe both.

Mr. Loomer: You will notice that for item 58800-1, the most-favoured-nation tariff on and after January 1, 1969, will be 30 cents, and the following January will be 20 cents, and on and after January 1, 1971 will be 10 cents, and after January 1, 1972, it will be free.

Senator Lang: Is there any power to accelerate that reduction?

Dr. Annis: It would not be contrary to our commitments to accelerate. The commitment is that we will go at least this fast, but there is no commitment which says we cannot go faster. That lies in the hands of Parliament.

Senator Lang: But it could not be done by a ministerial act?

Dr. Annis: I would doubt that. This is a statute.

Senator Lang: But it could be postponed by ministerial act.

Dr. Annis: But only under circumstances that would justify it.

Senator Connolly (Ottawa West): Mr. Chairman, since this is the last section, could I ask a question? I suppose it is fair to say that the reductions in the Kennedy Round have come about primarily because of the passage of the Trade Agreement Act in the United States that gave to the President the authority for a period of five years to authorize these cuts. Now you have gone through this exercise and have achieved a great deal within the deadline. Is it fair to ask the officials whether they think that there could be another round after all these have been implemented, or do they think, simply from an official point of view, that officials in all the other countries that were party to the discussions anticipate a similar exercise with further reductions at some future time?

Dr. Annis: I think that officials would be like other observers who have some advantages in speculating in a field like this, but are not in a position to be certain. They probably don't know. I think you are quite correct when you say that this is a major step that is being brought into effect. It will involve quite a bit of digestion in our own country, and in other countries. Officials here and elsewhere, are thinking in terms of possibilities for future progress in this as in other fields of international co-operation, but I do not think that either here or in other capitals they are going very far out on limbs to predict or to advocate in detail what future steps should be. Both in official circles and academic circles one hears of various possibilities, for example, various sorts of free trade areas, sector approaches to free trade, and this kind of thing, but at the present stage all those are rather speculative. Naturally there are some approaches that would appeal to one country but not to another. One must think in terms not only of what one would like, but what might be negotiable against the kind of background that is provided by the world we live in today.

Senator Connolly (Ottawa West): But meantime negotiation of individual agreements still is possible.

Dr. Annis: Yes, but of course it is possible only to the extent that countries have nego-

tiating authority. In Canada, negotiations can be carried on and the results implemented either under the authority of section 10, to which the chairman has referred, or by coming back to Parliament afterwards. There would be some countries, specifically the United States, where negotiations are only possible within the limits of authority conferred by Congress on the President, and at the moment the President doesn't have any negotiating authority.

Senator Croll: You say at the present the President does not have negotiating authority. Is that because it is the end of a regime or the end of time?

Dr. Annis: Because the provisions of the Trade Expansion Act of 1962 have expired, and as yet there is nothing else to replace it. There have been suggestions from official circles in Washington that the administration will be going to Congress at some not too far distant date to ask for new authority, but as of now there is no bill before Congress.

Senator Croll: Has it not been the practice over a period of years to give to the new government or the new President authority when he comes into office, or is it simply that the dates have conflicted?

Dr. Annis: I think the correct answer is that the dates have conflicted.

Senator Croll: In other words, the carryover.

Dr. Annis: Yes, the carryover. We could start from the Reciprocal Trade Agreements Act of 1934 which had a whole series of renewals, usually for three-year periods. Then we had the Trade Expansion Act of 1962, which, while it had a different name, was really a continuation on a broader basis of the sort of thing that had been done every three years or so since 1934.

The Chairman: Shall the schedules carry?

Hon. Senators: Carried.

The Chairman: Shall I report the bill without amendment?

Senator Burchill: Before you report the bill, Mr. Chairman, I think I should say that this is a magnificent achievement and I think the officials are to be very much congratulated. I think this is a real breakthrough.

Senator Carter: I want to ask one question relating to Schedule A, the first item there which is Yeast. Is that the only reference to yeast in the schedule?

Mr. Loomer: No, there are two other items referring to yeast.

Senator Carter: I remember when yeast used to come in from Britain in granular form, it used to come in free, but then when it was compressed there was a duty on it.

Mr. Loomer: The effect of this is to reduce the duty on granular yeast.

Senator Carter: And whether it is granular or in cake form, is it the same?

Mr. Loomer: This bill provides for a 5 per cent British preferential rate and 10 per cent most-favoured-nation rate.

Senator Kinley: What is the situation with regard to our money? They used to have in the United States a countervailing rate of 5 per cent. Do they still do that in the States?

Mr. Kelly: As I understand it the countervailing duty is only applied in the United States when there is a bounty or grant given on the export of goods into that country. It is not in connection with tariff reductions.

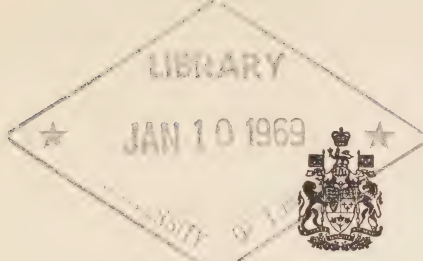
Senator Kinley: And on this fish business that Senator Smith was talking about, have they done anything about the quotas?

Mr. Kelly: No, the ground fish fillets are under quota and this was not changed in the Kennedy Round and it still remains in effect.

The Chairman: Shall I report the bill?

Hon. Senators: Agreed.

The committee adjourned.



Government
Publications

First Session—Twenty-eighth Parliament
1968

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 12

First and Second Proceedings on the
"WHITE PAPER ON ANTI-DUMPING".

WEDNESDAY, DECEMBER 11th, 1968
and
THURSDAY, DECEMBER 12th, 1968

WITNESS:

Department of Finance: **C. D. Arthur**, Deputy Director, International
Economic Relations Division.

APPENDIX:

**"A"—Proposed Draft Regulations Relating to Sections 9 and 10
of Draft Anti-Dumping Bill.**

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Fergusson	Macnaughton
Aseltine	Gélinas	McDonald
Beaubien (<i>Bedford</i>)	Gouin	Molson
Beaubien (<i>Provencher</i>)	Grosart	O'Leary (<i>Carleton</i>)
Benidickson	Haig	Paterson
Blois	Hayden	Pearson
Bourget	Hays	Phillips (<i>Prince</i>)
Burchill	Inman	Rattenbury
Carter	Irvine	Roebuck
Choquette	Isnor	Smith (<i>Queens-</i> <i>Shelburne</i>)
Connolly (<i>Ottawa West</i>)	Kinley	Thorvaldson
Cook	Laird	Vaillancourt
Croll	Lang	Walker
Desruisseaux	Leonard	Welch
Dessureault	Macdonald	White
Everett	(<i>Cape Breton</i>)	Willis—(49)
Farris	MacKenzie	

Ex Officio members: Flynn and Martin.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Monday, December 9th, 1968:

“With leave of the Senate,

The Honourable Senator McDonald moved, seconded by the Honourable Senator Langlois:

That the Standing Committee on Banking and Commerce be authorized to examine and report upon the White Paper on Anti-Dumping dated September, 1968, tabled today; and

That the Committee be empowered to send for persons, papers and records and to print its proceedings upon the said White Paper on Anti-Dumping.

The question being put on the motion, it was—
Resolved in the affirmative.”

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, December 11, 1968.
(12)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 11.30 a.m.

Present: The Honourable Senators Aseltine, Beaubien (*Bedford*), Blois, Burchill, Carter, Cook, Desruisseaux, Fergusson, Gouin, Haig, Inman, Irvine, Isnor, Kinley, Leonard Macdonald (*Cape Breton*) MacKenzie, Macnaughton, Molson, Rattenbury, Welch and Willis. (22)

In attendance:

E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Upon motion, it was *Resolved* that the Honourable Senator Leonard be elected *Acting Chairman*.

The White Paper on Anti-Dumping was considered.

The following witness was heard:

DEPARTMENT OF FINANCE:

C. D. Arthur, Deputy Director, International Economic Relations Division.

Mr. Arthur addressed the Committee on the White Paper with particular reference to the proposed Draft Act contained therein.

Draft Regulations re sections 9 and 10 to be printed as an Appendix hereto.

At 1.00 p.m. the Committee deferred further consideration of the above matter until the next sitting and thereupon adjourned.

THURSDAY, December 12, 1968.
(13)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 11.30 a.m. to resume consideration of the White Paper on Anti-Dumping.

Present: The Honourable Senators Leonard (*Acting Chairman*), Aseltine, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Fergusson, Gouin, Haig, Inman, Irvine, Lang, Molson, Rattenbury and Welch. (17).

In attendance:

R. J. Batt, Assistant Law Clerk and Parliamentary Counsel, and Chief Clerk of the Committees.

Mr. Arthur, from the Department of Finance, was again heard.

The White Paper on Anti-Dumping and the Draft Act contained therein were further examined at length.

The proposed amendments to the Draft Act, as contained in the Votes and Proceedings of the House of Commons of Monday, December 9th, 1968, were discussed.

At 1.00 p.m. the Committee adjourned further consideration of the above matters until Wednesday, December 18th, 1968, at 10.00 a.m., and thereupon adjourned.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Wednesday, December 11, 1968.

The Standing Committee on Banking and Commerce, to which was referred the White Paper on Anti-Dumping dated September, 1968, for examination and report, met this day at 11.30 a.m. to give consideration to the White Paper.

Senator T. D'Arcy Leonard (*Acting Chairman*) in the Chair.

The Acting Chairman: Honourable senators, I might start with a few preliminary remarks, because this is a proceeding which is not quite in the usual manner of our deliberations.

This White Paper on Anti-Dumping was tabled on Monday of this week in the Senate, and a motion was made by the Acting Leader of the Government in the Senate to refer it to this committee.

Copies of the White Paper on Anti-Dumping should be before all members of this committee. This White Paper has been before the committee of the House of Commons, the Finance, Trade and Economic Affairs Committee, for some time. I think they have had some 22 meetings of that committee studying the White Paper.

Included in the White Paper is a draft bill. This White Paper and this bill follow upon the Kennedy Round negotiations, and the proposed legislation is part of Canada's undertaking during those negotiations, and there is a time limit on Canada's enacting the legislation. So, the purpose of our studying the White Paper is as a preliminary to the consideration of a bill that will reach us in due course, or that is expected to reach us in due course.

Senator Isnor: It is already before the house, is it not?

The Acting Chairman: As far as I know, it has not yet been introduced—it had not been up to Monday night—but it is proposed to introduce it this week, and if we were trying to close for the Christmas recess by, say, the end of next week, our time for consideration

of the bill itself would be limited and, therefore, the present sittings of the committee are for the purpose of giving as much study as we can to the subject matter and to what we understand will be proposed in the bill, before the bill actually reaches us.

In order to do that, we have before us this morning Mr. C.D. Arthur, Deputy Director of the International Economic Relations Division, Department of Finance. Subject to any questions which senators might like to ask now, I would propose to ask Mr. Arthur to proceed and explain this White Paper and whatever we would like to know about it.

Senator Haig: What is the time limit, Mr. Chairman?

The Acting Chairman: I think the time limit is January 1, 1969.

Senator Kinley: Mr. Chairman, would you turn to page 15, Article 4, "Definition of Industry"? Would you read the first line of Article 4, "Definition of Industry," which is on page 15?

The Acting Chairman: Yes, Senator Kinley, Have you a question?

Senator Kinley: It starts off:

In determining injury...

I think that work is "industry"? Have you got that?

In determining injury the term "domestic industry" shall be interpreted...

The Acting Chairman: I think if we allow Mr. Arthur to go ahead he will be able to clarify that.

Senator Kinley: But it is a serious mistake, and I think it is a typographical error.

The Acting Chairman: No, I think the word is "injury".

Senator Kinley: You think that is right?

The Chairman: Yes, and I think you will find this is a key to the question of dumping.

Senator Kinley: All right.

The Acting Chairman: I think I should make one further remark, and that is that in the light of the circumstances in which we are considering this White Paper it is not proposed to close these proceedings today. We will continue our consideration of the White Paper until the bill either reaches us or we are satisfied with the progress that has been made in the House of Commons on the bill in anticipation of its reaching us. So, we will not conclude these hearings today.

Hon. Senators: Agreed.

The Acting Chairman: Mr. Arthur, would you now proceed?

Mr. C. D. Arthur, Deputy Director, International Economic Relations Division, Department of Finance: Mr. Chairman and honourable senators, if it is acceptable to the committee I would like in my statement to explain in a general way, rather than on a clause by clause basis, the principal features of the draft anti-dumping act which is incorporated in the White Paper, and its relationship to the various provisions of the anti-dumping code agreed to by the Government at the conclusion of the Kennedy Round.

I also hope to review certain features of the draft act, particularly the enforcement provisions which are not dealt with in the Code.

The committee might find it helpful if I make a few comments concerning the question of dumping, and the background to the Code, before proceeding as I have suggested. Article VI of GATT which is on page 9 of the White Paper, has provided since 1947 that dumping, by which products of one country are introduced into the commerce of another country at less than the normal value of the products, is to be condemned if it causes or threatens material injury to an established industry in an importing country, and that anti-dumping duties may be applied to offset the impact of dumping.

Conversely, this provision can be interpreted to mean that the practice of dumping is condoned internationally providing it does not cause or threaten injury to domestic producers.

In balance of payments terms, or looked at from the consumers', including the industries', standpoint it is, of course, desirable that it be possible to import those goods

required from abroad at the lowest prices obtainable. However, excessive imports at unrealistic prices which have an injurious effect on domestic production, employment, and economic growth may not be in the national interest. Accordingly, legislation to deal with dumping must of necessity seek to arrive at a balance which reflects the realities of the economy, and, at the same time, promotes the development and growth of efficient productive units.

Article VI of GATT sets out, but only in very broad terms, what constitutes dumping. It is open to differences in interpretation, and is silent on the important matter of procedures. Possibly because of these deficiencies differences arose over the years in the anti-dumping procedures of different countries, and in the Kennedy Round the major trading nations agreed that they should work out a new convention which would ensure some degree of uniformity in the use of national anti-dumping policies and procedures. The Government decided that Canadian representatives should participate actively in these negotiations because without such participation there was a risk that a code would be developed which did not reflect Canadian views or the needs of our economy. If this happened, obviously we would be under pressure from some of our trading partners nonetheless to adhere to the code.

As the Minister of Finance stated in the introduction of the White Paper, the Government authorized signature of the code on behalf of Canada because our two principal objectives in negotiations had been achieved, namely, that it protected Canadian exports against the unreasonable use of anti-dumping duties by other countries, and at the same time enabled Canada to apply such duties when dumping caused or threatened injury to Canadian industry. Other signatories to the code are under an obligation to apply it from July 1, 1968, and Canada has undertaken to comply with its terms not later than January 1, 1969.

The present legislation provides that if the actual selling price of imported goods ruled to be of a class or kind made in Canada is less than the fair market value of the goods as determined under the Customs Act, then in addition to the normal duties under the tariff a special or dumping duty is to be levied equal to the difference between the selling price and the fair market value as determined

under the Customs Act up to a maximum of 50 per cent *ad valorem*. To obtain a ruling that a product is of a class or kind made in Canada, Canadian firms must produce an amount equal to at least 10 per cent of the domestic consumption of that product. It follows that no protection against dumping is given to producers who produce less than the required 10 per cent, or to firms just starting out in business, which is when they may require it most, even though this is clearly permitted under GATT. It can also be argued that because of the so-called automatic application of anti-dumping duties under our law many Canadian consumers and business firms have to pay more than they should for imported materials and other goods, and that Canadian producers who are not being damaged by dumping get protection they do not need.

Another important point is that our existing anti-dumping law does not explicitly require a formal inquiry or determination that injury has occurred to a domestic industry because of dumping. Rather, our law, which is unduly cumbersome because it embraces two separate statutes, involves a set of general rules which are applied to each import transaction. It is the lack of a formal inquiry into injury which has given rise to a number of complaints from our trading partners during the past few years.

Mr. Chairman, that is all I would like to say at this time in the way of background comments, as I suspect the committee is more interested in the provisions of the draft act. I should like to apologize in advance should my remarks get too technical. You will appreciate that it is rather difficult to discuss complex legislation of this kind in general terms. As I mentioned earlier, I do not intend to proceed on a clause by clause basis, but rather to discuss each major segment of the draft act and its relationship to the code.

Senator Isnor: Before we go to the act, could I ask Mr. Arthur what he means by the term "selling price". What selling price is that?

Mr. Arthur: The selling price to the importer in Canada. In determining dumping under the present customs legislation, dumping occurs if the selling price to the importer in Canada is less than the fair market value of the goods in the country of export.

Senator Isnor: Then the selling price applies to the importer and not to the general public?

Mr. Arthur: No, sir, it is to the importer of the goods. That is the selling price to which I referred.

Senator Rattenbury: Is the 10 per cent which will apply a new provision?

Mr. Arthur: No, sir. The 10 per cent rule is one that applies under the present legislation. That is not carried forward into the new or proposed legislation.

Senator Rattenbury: That is what I thought.

Senator Kinley: When we talk about dumping, this relates to dumping between Canada and another country. What about the dumping of grain from the United States? Is there anything internationally to look after that? Into France, for instance, or Britain?

Mr. Arthur: As honourable senators will know, we do have, and have participated in, many discussions on international grain prices and international grain agreements. I would suggest that that is the context in which the question should be put. It has no direct relationship to this proposed legislation that is before you.

Senator Kinley: This White Paper is international.

The Acting Chairman: I imagine that would be covered by the International Wheat Agreement.

Senator Kinley: The Americans have dumped this year.

Senator Molson: Are not we considering only the trade in or into Canada?

Senator Kinley: That is my question.

Senator Molson: There is no suggestion here that any other trade off our shores can be affected by the proposed legislation.

Senator Kinley: Well, is that the answer?

Mr. Arthur: That is correct.

Senator Kinley: Then that is the answer, that it is not in. You used the words "normal price" in referring to anti-dumping, but the normal price is a pretty general thing, is it not? When you explained it you referred to the selling market price, and I think that is a better definition.

Mr. Arthur: I think I can probably answer these questions if I may proceed with my explanation of the draft bill, which I hope will cover how normal value is determined.

The Acting Chairman: I think Mr. Arthur will now deal, as I understand it, with the various clauses in the draft act, which is in your White Paper. Probably it starts at page 40.

Mr. Arthur: If it is agreeable, I should like to deal with it in narrative form I will jump from section to section but I will give the reference to the committee and also give the page reference as I go along.

The first segment of the draft act I should like to discuss with you is that relating to dumping. Section 8, (on page 48) of the draft act, provides that goods are dumped if the normal value exceeds the export price. This section also defines the margin of dumping as the amount by which the normal value of the goods exceeds the export price of the goods.

Sections 9 through 12—section 9 also starting on page 48—set out the criteria or rules to be followed in determination of both normal value and export price.

Taken together, these five sections may be considered the most important in the draft act in that they outline the conditions under which goods can be ruled as dumped into Canada, and the basis for the measurement of the margin of dumping.

I might mention, Mr. Chairman, that the concept of "margin of dumping" which is used in the Code, and has been carried forward into the draft act, is quite a different concept from that which we now have in Canadian law, because it relates to the difference between two values, the normal value and the export price, both of which are subject to a determination by the national authorities, which will be carried out, in our case, by the Department of National Revenue.

Section 9 on page 48 provides that the normal value is to be taken as the price at which like goods are sold, at arm's length, in the ordinary course of trade in the country of export at about the same point in time as the goods were sold to the Canadian importer.

Detailed adjustments for differences in the terms and conditions of sale, and in taxation and for other differences affecting price comparability between the sales in the country of export and the sale to the Canadian importer,

are to be prescribed by regulations of the Governor in Council.

The Acting Chairman: Mr. Arthur, I understand that there is a draft set of those regulations.

Mr. Arthur: Yes, sir. In the other committee we tabled draft regulations on sections 9 and 10 which, if it is your committee's wish, I would be pleased to furnish.

The Acting Chairman: Is it the committee's wish that we should have those draft regulations?

Senator Haig: As an appendix to today's proceedings.

Hon. Senators: Agreed.

The Acting Chairman: If you will file them with us, we will have them printed as an appendix to today's proceedings.

Mr. Arthur: Yes, Mr. Chairman.

For draft regulations, see Appendix "A".

Senator Molson: In speaking about the adjustments, for example, the very heavy purchase tax in the U.K. would be one of those elements that would be removed from the price in making a comparison between the export price and the normal value, is this correct?

Mr. Arthur: Yes, if it were a tax that was remitted on exports, that is right, sir.

Senator Molson: Which the purchase tax is; it does not apply?

Mr. Arthur: Yes, it does not apply.

It will be appreciated that to achieve comparability between the importer's home market sales and the sale to Canada recognition must be given to legitimate differences for quantities, trade levels, deferred discounts, freight and taxation. These are now provided for in either the Customs Act or in the general regulations under section 6 of the Customs Tariff.

If it is not possible to establish normal value in this way, the act provides for three alternative methods that may be used.

Firstly, if the exporter sold goods solely or primarily for export but there were sales of like goods for home consumption in the exporting country by other vendors, the Department of National Revenue must look to these latter sales.

Secondly, by reference to the price at which like goods are sold by the exporter to importers in third countries. That is the second alternative, that it is possible, if there are no domestic sales of the like goods, then to look at the sale of such goods by the exporter to importers in third countries.

The third alternative is the cost of production of the goods, plus an allowance for administrative, selling and all other costs and profits. In the case of the latter two methods the Minister of National Revenue must exercise an option as to which basis is to be used in any particular case.

Where goods are exported to Canada by a state trading country, normal value is to be determined in a manner prescribed by the minister. Accordingly, it will be possible to continue the present practice of establishing values for imports from such sources by reference to the values at which like goods produced in neighbouring countries are sold under normal conditions.

Senator Isnor: Could you give us an example of the comparison they make, Mr. Arthur, from another country as compared to our country?

Mr. Arthur: This is a very hypothetical case, Mr. Chairman, but supposing that, say, shoes were exported from Poland and the Minister of National Revenue decided it was not possible to establish normal value or, under the present law, fair market value, for these shoes, then it is open to him to look at the value of that type of shoe as sold in an open economy country. In other words, he might, in that particular case, look at the price at which that class or style of shoe would be sold, say, in the United Kingdom.

Senator Isnor: Would you like to make a comparison of cotton goods being imported into Canada from Japan at the present time, as compared to our local production?

Mr. Arthur: That circumstance is slightly different. That would be considered an open economy. The possible problem with cotton goods is not so much their being dumped, because it may in such circumstances be possible to establish that the price that they are being offered to Canada is similar to the price at which they are offered for sale in Japan.

There is a consequential amendment proposed in this White Paper which deals with really non-dumped goods which have a

disruptive effect on sectors of Canadian industry, but they are not in the normal sense dumped goods. In the sense of the Code they are not dumped goods. I will be commenting on that particular section later.

Senator Isnor: I will wait until then.

Mr. Arthur: Section 10, which is at page 52 of the White Paper, provides that "export price" is to be taken as an amount equal to the lesser of the exporter's sale price for the goods, or the importer's purchase price for the goods, adjusted in the manner prescribed by the regulations to exclude all charges thereon resulting from or arising after their shipment to Canada—in other words, on an f.o.b. basis.

Provision is made in section 10(2) for the establishment of an export price where none exists—for example, in the case of a consignment shipment—or where the exporter's sale price is unreliable because the transaction took place between associated persons, or because there may be some compensatory arrangement between the parties concerned. This provision will be most important in dealing with "hidden" dumping because it requires going behind the customs transaction in those cases involving related companies. It has often been represented to us that our existing law is not as vigorous in protecting Canadian producers from such dumping as are the laws of some other countries.

Section 11, on page 56 of the White Paper, is a residual provision which provides the Minister of National Revenue with authority to prescribe the manner in which the normal values and export price is to be determined where sufficient information is not available.

Section 12 carries forward two provisions of the present Customs Act relating to indirect shipments.

How do these sections of the act compare with the provisions of the Code? I believe the committee will find that they are precisely in accord with Article 2 of the Code, which is to be found at page 17 of the White Paper, and which is concerned with the determination of dumping.

The second major requirement in both the draft act and the Code is that there must be a formal inquiry into the impact of dumping on Canadian production. Anti-dumping duties may be alleviated only when dumped goods have caused, are causing, or are likely to

cause, material injury to production in Canada of like goods, or have materially retarded the establishment of production in Canada of like goods. This is the most significant change contemplated as compared to the existing law.

Article 3 of the Code is concerned with the determination of injury.

The draft act contemplates the establishment of an anti-dumping tribunal—this is section 21, which is found at page 80—to be composed of not more than five members to be appointed by the Governor in Council to receive representations, hear evidence, and arrive at decisions on the effect of dumped imports on Canadian production.

Senator Haig: Mr. Chairman, at this point may I ask who institutes the inquiry? Is it the industry affected, or...

Mr. Arthur: The draft legislation, Mr. Chairman, provides that a complaint of dumping can be initiated by the industry, or it is open to the Deputy Minister of National Revenue to commence an investigation if he believes that dumping is occurring and that that dumping would be injurious.

Senator Haig: Thank you.

Mr. Arthur: The next section of the act that I would like to deal with, Mr. Chairman, has to do with procedures.

Part II of the proposed bill, commencing at page 58, sets out the procedures to be followed by the Department of National Revenue and the anti-dumping tribunal in their investigations of dumping and injury. In summary, an investigation is to be initiated by the deputy minister either on his own initiative or on receipt of a complaint on behalf of Canadian producers if, in his opinion there is evidence of dumping, and either he or the tribunal is of the opinion that the dumping is injurious to production in Canada.

If as a result of this initial investigation the deputy minister concludes that goods are being dumped, he makes what is called a preliminary determination, and from that date until an order or finding is made by the tribunal imports of the goods in question are entered provisionally, subject to a final decision by the deputy minister regarding the amount of duty payable.

Senator Isnor: That is something new, is it not, Mr. Arthur?

Mr. Arthur: That is true, sir, yes. The deputy minister may demand either the payment of provisional duties or the posting of security in respect of any goods entered during this period. Should the deputy minister decide not to initiate an investigation after receiving a complaint he must advise the complainant in writing of his decision, and the reasons for such decision.

If the investigation was not initiated merely because the deputy minister did not consider that there was sufficient evidence of injury, the act provides that the complainant may seek the opinion of the tribunal on the question of injury.

As required by Article 5(c) of the Code, the act provides that the deputy minister must terminate the investigation before making a preliminary determination, if he is satisfied that "there is sufficient evidence of dumping to justify proceeding with the investigation", or "the margin of dumping of the goods or the actual or potential volume of dumped goods is negligible", or "if there is not sufficient evidence of injury".

If the investigation is terminated because of the lack of evidence of injury, the matter may be referred to the tribunal for its opinion, which must be rendered as soon as possible. Public notice must be given of the deputy minister's decisions regarding the initiation of investigations, the preliminary determination, the final determination and the determination of investigations. On receipt of the deputy minister's preliminary determination of dumping, the anti-dumping tribunal inquires into whether the dumping of these goods is the cause of injury, threat of injury or of material retardation.

Section 16 (2), on page 70, provides that the tribunal may also direct the deputy Minister to investigate the dumping of goods similar to those covered by the preliminary determination. The tribunal must within a period of three months from the date of the preliminary determination decide on the impact of the dumping on Canadian production. If the tribunal finds injury, then the deputy minister makes a final determination of dumping in respect of any goods described in the order which were entered into Canada before the order or finding of the tribunal, and anti-dumping duties are levied definitively. All like goods entered subsequent to the tribunal's order or finding are subject to the definitive application of dumping duties at

the time of entry in the amount of the margin of dumping as calculated in respect of each importation.

Section 32, on page 90, provides:

The Tribunal may, at any time after the date of any order or finding made by it, review, rescind, change, alter or vary the said order or finding or may rehear any matter before deciding it.

The decision as to the margin of dumping and the category of goods involved is to be subject to appeal to the Tariff Board, and on points of law, to the Exchequer Court. This is similar to the appeal procedures now provided for in the Customs Act. However, like the legislation in Britain and in the United States, there is no appeal from the tribunal's decision of injury.

Senator Carter: I wonder if the witness could clarify one thing. On a number of occasions he used the term "goods". Do you mean all goods, all kinds of goods, or just manufactured goods, raw materials? What do you mean by goods?

Mr. Arthur: It would cover any goods. It is "like goods".

Senator Carter: Agricultural products?

Mr. Arthur: It is conceivable that it could be, but again agricultural imports are usually not dumped in the sense of the definition of dumping referred to here, but rather that they cause disruption of the Canadian market, particularly if they are end of season or because of the advance of the season, when the price of the agricultural product may be in keeping with the domestic market circumstances, but at a price which causes disruption on the Canadian market.

Senator Carter: Would it not be better to use the word "commodities" rather than "goods"?

Mr. Arthur: I believe the draftsmen consider "goods" to be more embracing than the word "commodity". It is one we have carried forward into this proposed legislation.

The Acting Chairman: I take it the answer to Senator Carter's question is that there could be dumping of agricultural goods that would come under this proposed act?

Mr. Arthur: Yes, sir.

Senator Molson: Could the word "goods" include commodities?

Mr. E. Russell Hopkins, (Law Clerk and Parliamentary Counsel): The word "goods" is not defined in either the international code or here.

Mr. Arthur: No.

Senator Molson: It is not in the definitions of this draft act.

Mr. Arthur: Article 2 of the code, on page 12, provides for the definition of "like product", and says it:

... shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

Senator Molson: So you are using the word "product" and talking about "goods" in the draft act.

Mr. Arthur: I think that my reference to "goods" here is in the narrative that I am using, because the proposed legislation carries forward into it the definition of "like products" as set out in the code.

Senator Kinley: I think there is considerable trouble with second-hand goods such as automobile parts.

Mr. Hopkins: "Like goods" is in the definition.

Mr. Arthur: The legal draftsman and those responsible for the drafting of the proposed legislation felt that the expression "like goods" would be more embracing and more clearly understood than the wording in the code, which refers to "like products".

The next features of the proposed legislation that I would mention relate to retroactivity. The draft act provides for the definitive application of anti-dumping duties to goods entered provisionally during the course of inquiry and retroactively for an additional three months in those cases where there is a history of dumping or the importer should have been aware that the exporter was practising dumping, and massive dumped imports in a relatively short period causes material injury to production in Canada. These provisions, taken almost word for word from article 11 of the code, are found in sections 4 and 5 of the draft bill, on pages 44 and 46. The

latter section, section 5, is designed to meet the difficult problem of so-called sporadic dumping.

If I may, I should now like to comment on certain additional features of the draft act, some of which are not dealt with in the anti-dumping code. The first is the matter of enforcement. It is clear that under the code governments need to have certain information if they are to carry out their obligations in the length of time specified. Paragraph (i) of article 6 provides that:

In cases in which any interested party withholds the necessary information, a final finding, affirmative or negative, may be made on the basis of the facts available.

Because governments are permitted under the Code to make final decisions if sufficient data is not supplied, this puts a certain amount of pressure on the parties concerned to provide the required data. Equally important is the matter of false or incorrect information and fraud.

The provisions of sections 34 of the draft act, together with sections 10(3), 11, 17(2), 18(4) and 27(2) are intended to meet these problems and to enable the effective administration of the act.

Section 34, on page 92, in particular puts teeth into the act by not allowing the perfecting of an entry until the Deputy Minister has been supplied with the necessary data, and provides for a fine equal to the duty-paid value of the goods where the information is false or incorrect. These provisions are particularly important in the case of transactions between related companies.

Another important feature of the draft act is that it will be possible to provide protection for firms just starting out and those supplying a small share of the domestic market.

As I mentioned earlier, under the present law such protection may only be granted if Canadian industry is supplying at least 10 per cent of the Canadian requirement and has obtained a "made in Canada" ruling.

Senator Molson: Mr. Chairman, I am a little puzzled there. How could the entry not be completed or perfected if there has been no complaint? Supposing new goods—which is the term we have been using all through this thing—if goods of some new kind start coming in here, there cannot be a complaint immediately, surely? So, presumably those

goods would get into the commercial stream well in advance of any action the minister might take, as suggested by you, in not permitting the completion of the entry. I am not quite sure how this could work mechanically. From the timing point of view, I do not see how this could work.

Mr. Arthur: Mr. Chairman, the provisions in the proposed legislation relate to those in which there has been a determination that entry of the goods has been made, there has been a determination of dumping and injury, and then, if later it is determined that they were falsely entered or there was fraud, it does make provision to go back and assess the penalty.

In a case where the goods are entered, say, for some time or have been entered and there has been no determination—there was no determination of dumping or injury—this act relates to the Customs Act and there are provisions in the Customs Act for fraudulent entry now and, indeed, this is a criminal offence, but the provisions in this draft legislation relate only to those circumstances where there has been importation, it has been determined that there was dumping, the dumping was injurious, and later it was further determined that there had been fraud or misrepresentation, and it makes provision there for the penalties that apply in those circumstances.

Senator Carter: I am wondering how this machinery would work with respect to poultry, turkeys, and agricultural products like tomatoes. Our friends in Ontario complain practically all the time, seasonally, that these products are dumped, and if they do not actually put our own people out of business they hurt them financially. With all this machinery, how are you going to get it going fast enough to prevent the injury?

Mr. Arthur: Mr. Chairman, as I mentioned earlier, the problems relating to agriculture and some of the other products that have been mentioned are matters which are dealt with under another section of the Customs Act. They are now considered under section 40A(7) of the Customs Act, and this draft legislation does propose a re-wording of that particular section and placing it in another section of the Customs Act. But these products are really not, in the sense of the Code, dumped products. You are talking, I believe, sir, about distress prices or end-of-season, and so on.

Senator Carter: Yes.

Mr. Arthur: And we will be dealing with that particular section shortly. There are just one or two other comments I would like to make, Mr. Chairman. I should like to mention a most important point concerning the definition of "industry" as set out in Article 4(a) of the Code, which is on page 15, which the tribunal must take into account in its decision on injury.

"Industry" as used in the Code, and "production in Canada" as used in the draft act, do not mean a group of corporations, but relate to the production of a particular product. Accordingly, it is possible to give protection against dumping to a multi-product corporation which is being injured by the dumping of only one of its product lines.

Under our present legislation liability for anti-dumping duties occurs at the time the goods are imported into Canada. Because of the concepts of "dumping" and "margin of dumping", as used in the draft act, differ somewhat from the terms of our present legislation, it will now be possible to create the liability for dumping duties before goods actually cross the border.

The draft act is written in terms of the dumping occurring at the time of the sale, which may be some time prior to the date of shipment of the goods to Canada.

It will be noted that under section 3 of the draft act, on page 44, the liability for anti-dumping duties is established when the tribunal makes its order or finding, and not when the goods are entered. The actual collection of the duties does not, of course, take place until the goods are imported into Canada.

Senator Isnor: How can you enforce that, Mr. Arthur?

Mr. Arthur: Well, Mr. Chairman, you cannot enforce it in the sense of actually collecting the dumping duty, but perhaps I might give an illustration. Suppose electrical generators are ordered two or three years in advance of their importation. If the terms of the contract are known at the time the contract is completed—and that, in terms of this legislation, means the sale or the agreement for sale—it will be open at that time to investigate the sale price of those generators in relation to the sale price of similar generators in the domestic market of the exporting country. If it is determined that the price to, say,

the utility in Canada which is buying these generators is less than the normal value of similar generators that would be sold domestically, or in the country of export, you can at that point of time determine a liability for dumping duty. In other words, you can advise the utility company in Canada that if it imports these generators at the price of the contract then at the time of importation they will be liable to dumping duties in a particular amount.

Really, sir, what I am saying is that you can determine the liability. The enforcement or application of dumping duty will not, of course, take place until the time the goods are actually entered into Canada.

Senator Blois: That, Mr. Chairman, is rather unfair to the purchaser in Canada. For instance, if I can go back to the generators you were referring to, such items are purchased perhaps two years in advance. You may be buying them at, say, \$2,500 each, but at the time they come into Canada the price here may be \$2,800. The purchaser has signed a contract, which he cannot cancel, with a firm in the United States—if he is buying from the United States—and he is paying duty, and that is rather unfair to him, is it not?

Mr. Arthur: Mr. Chairman, the amount of the liability is calculated at the time of sale. The amount of duty that is assessed is based on the circumstances at the time of the sale, and not at the date of the importation, as under the present legislation.

Senator Blois: I must have misunderstood you. Thank you.

Senator Kinley: Mr. Chairman, in the importation of large mechanical products, like diesel engines, time is an awfully big factor. For instance, if you buy them in the United States you get them within a month, but if you buy them in Europe you get them in six months or a year. I have never heard of dumping duties for that type of business. You could buy an engine in Germany or Poland. If you bought it in Poland then it would be cheaper, but the delivery takes a long time. I have never heard of dumping duty being used in respect of such items.

Mr. Arthur: Mr. Chairman, dumping duty would, I suggest, under the present legislation be assessed against such importations if the sale price to the importer in Canada was

less than the fair market value of those goods in the country of export.

Senator Kinley: Less ten per cent, if they are made in Canada.

Mr. Arthur: Yes, sir. I am, of course, referring to goods made in Canada.

Senator Carter: While you are on that point may I ask how you determine dumping. Suppose a country has a two price system—we have been talking about two price systems for weeks—where there is a domestic price and an export price. Where an exporting country has a two price system would we regard that as dumping?

Mr. Arthur: If the export price was less than the normal value of domestic sales, yes—in other words, if the domestic price is higher than the export price.

Senator Carter: But obviously it would be if there was a two price system, because that is what a two price system is.

Mr. Arthur: In those circumstances if the margin of dumping, or the difference between those two prices was such that it would cause injury to Canadian producers of that particular product, then, yes, sir.

Senator Carter: I see. Injury comes into it?

Mr. Arthur: Yes, under the proposed legislation injury must always be determined before dumping duties will apply.

Senator Molson: We ran into this in respect of exporting barley to other countries, and exporting other grains and agricultural products.

The Acting Chairman: That is where there is an internal subsidy...

Senator Molson: Where the domestic industry pays higher prices than those at which barley is sold on the export market.

Mr. Arthur: Mr. Chairman, I am not as familiar with the grains agreement as I should be, but I believe that this is another product that is covered by that agreement.

Senator Molson: The international grain or wheat agreement?

Mr. Arthur: Yes, sir.

The Acting Chairman: Honourable senators, time is running on, and I would like to know what your feeling is. Obviously, we are

not going to finish Mr. Arthur's statement by one o'clock, but I point out that we are not under any great pressure of time. I will ask Mr. Arthur if he would like to finish his statement at this meeting.

Mr. Arthur: Mr. Chairman, I have just one short comment to make on the consequential amendments which have come up on one or two occasions this morning.

The Acting Chairman: Then, we will go ahead and finish that, and perhaps we can leave the questioning for another sitting.

Mr. Arthur: With respect to the consequential amendments the only substantive revision involved relates to the proposed deletion of subsection (7) of Section 40A of the Customs Act, which provides for the establishment of arbitrary valuations in respect of goods which are not dumped but which are causing injury to Canadian producers. The real impact of such fixed valuations is the assessment of anti-dumping duties in the amount of the difference between the value so fixed and the actual export price.

Under the Code it is not possible to use anti-dumping duties in this fashion. It is proposed that a new provision be added to the Customs Tariff to deal with imports which are not dumped but which threaten injury to domestic producers. Article XIX of GATT provides for such emergency action. The new provision will enable the Governor in Council, on a report from the Minister of Finance that goods are being imported under conditions which cause or threaten serious injury to Canadian producers or manufacturers, to order the levying of a surtax in respect of such imports. It should be noted that the emergency import tax provision achieves the same result as the present law, but it does not do so through the use of anti-dumping duties. The one change of substance in this connection is that an order under the new emergency provision is to cease to have effect after 180 days unless it is approved by Parliament.

Mr. Chairman, that concludes my remarks.

The Acting Chairman: The meeting is now open for questions, but I think Mr. Arthur would be available to come back at another meeting of the committee.

Mr. Arthur: Yes, sir.

Senator Isnor: I have one or two short questions. Do you represent the Department

of National Revenue or the Department of Finance?

The Acting Chairman: Mr. Arthur is a member of the Department of Finance.

Senator Isnor: It appears to me that the bulk of his work rests with the Department of National Revenue. I was wondering why the Minister of Finance was named instead of the Minister of National Revenue.

The Acting Chairman: I imagine Mr. Arthur can answer the question directly, but I should say that I think Mr. Labarge of the Department of National Revenue will be available as a witness for his department. Perhaps Mr. Arthur could answer Senator Isnor's question directly.

Mr. Arthur: Any action taken under this provision is one which is related to our international obligations under GATT. The Department of National Revenue is an administrative department, the Department of Finance is a policy department, the minister being responsible for commercial policy as it relates to international undertakings, and for that reason it was considered appropriate to make the Minister of Finance the person responsible here rather than the Minister of National Revenue, as under the present act.

Senator Isnor: Then all references to the deputy minister in this act are to the deputy minister of which department?

Mr. Arthur: Of National Revenue. The only reference to the Minister of Finance is in that consequential amendment to which we just referred, the one covering goods which cause injury but which are not in the proper sense dumped.

Senator Carter: I should like to ask a follow-up question to one put earlier when I asked about dumping. You said the factor of injury had to be taken into account. What section refers to injury? I see "dumped" in the definitions in section 2, and it is said to be as in section 8, but section 8 does not say anything about "injury".

Mr. Arthur: I would refer the honourable senator to section 3 on page 44, which says:

There shall be levied, collected and paid upon all dumped goods entered into Canada in respect of which the Tribunal has made an order or finding...

and so on.

...has caused, is causing or is likely to cause material injury to the production in Canada of like goods...

In other words, once this legislation is in effect, dumping duty will not be applied unless the tribunal makes an order or finding that the dumping has caused or is causing or is likely to cause injury.

Senator Carter: Should some reference be made to that section 2, subsection (1)(c)? It seems that dumping is defined in section 8 and also in section 3.

Mr. Arthur: The measurement of the margin of dumping is covered in section 8 of the proposed legislation. The undertaking of the tribunal to determine injury is set out in other sections of the proposed legislation, mainly section 16. Then sections 3, 4 and 5 of the proposed legislation deal with the liability for anti-dumping duty.

The Acting Chairman: In effect, Senator Carter, dumping is all right unless there is injury, so there have to be the two definitions, one of "dumping" and one of "injury". Is that not right?

Mr. Arthur: Yes. The definition of "dumping" is clearly spelled out in the proposed legislation. "Injury" is not; it is a matter of fact; it is left to the tribunal. The code suggests a number of indices that should be taken into account in determining whether there has been injury.

Senator Beaubien (Bedford): Section 7 says:

The Governor in Council may exempt any goods or classes of goods from the application of this Act.

Does that mean if I am in business and somebody is importing something that is putting me out of business I have no appeal if the Government has decided the act is not to apply to that class of goods? We did not like the discrimination given to the minister in respect of "class or kind". It seems to me this discretion is unbelievable.

Mr. Arthur: My only comment to that is that I do not think in the circumstances just cited any action would be taken under this particular section.

Senator Beaubien (Bedford): Mr. Arthur, that does not answer the question. If the Government does so decide, is there any appeal? What does it mean? Does it mean it is a free-for-all, that you could bring in that class of goods at any price you like and it does not matter whether it affects anybody else in business?

Mr. Arthur: To answer your question directly, if action is taken by the Government under this section—or I suspect any other act—there is no appeal from this provision.

Senator Beaubien (Bedford): This ruling?

Mr. Arthur: This ruling, whatever it may be.

Senator Beaubien (Bedford): That is quite amazing.

Mr. Arthur: Well, I should not comment.

Senator Burchill: That is the policy.

Senator Kinley: Is there any problem with free goods coming into the country with regard to dumping duties? The fact that the tariff makes them free would indicate we want them badly and there is free movement. Does it apply to free goods?

Mr. Arthur: The answer to that is Yes, sir.

Senator Kinley: It does?

Mr. Arthur: It does, whether they are free or dutiable.

Senator Kinley: But there is no problem.

Mr. Arthur: I would suggest to you, sir, that there are goods coming into the country duty-free and there is a fairly substantial Canadian industry competing against this free competition. I would suggest that the agricultural implement industry is one.

The Acting Chairman: Are there any further questions?

Senator Isnor: Is the tribunal that is being set up permanent?

Mr. Arthur: Yes, sir, it is. It says that the tribunal will consist of up to five members, and goes on to say that each member shall devote the whole of his time to the performance of his duties under the act, and shall not accept or hold any office or employment inconsistent with his duties under the act.

Senator Isnor: Mr. Arthur, this is a rather personal question: how long have you been with the department?

Mr. Arthur: Of Finance?

Senator Isnor: Yes.

Mr. Arthur: Well, I have just returned. I was there for six years, and away for four years.

Senator Isnor: That is long enough. Senator Blois will be bringing up later a question in regard to the importation of fur felts used in the manufacture of hats in the town of Truro. The firm appealed to the department, I think contending at the time it was unfair competition. The ruling was against them, and the firm has since gone out of business. Is that right, Senator Blois?

Senator Blois: Yes.

Senator Isnor: I was wondering if a case like that would be handled by this board in future.

Mr. Arthur: Mr. Chairman, in reply to the question, as I understand it you are going to call on witnesses from the Department of National Revenue, and they would be better equipped to respond to the first part of the question.

Under the proposed legislation, if any complaint were made to the Deputy Minister of National Revenue, before any action was taken the Deputy Minister would have to be satisfied that there was dumping and that dumping may cause injury or is likely to cause injury, and he would refer it to the tribunal. If the tribunal, after an investigation, determined that injury was caused, then the importation of those felts would be subject to dumping duty.

But the Deputy Minister, as under the present legislation, would have to be convinced at the present time that there is dumping. Under the proposed legislation the Deputy Minister would have to be satisfied that not only was there dumping, but the dumping was not negligible and that there would likely be injury if that dumping continued, in which case he would make a determination which would be referred to the tribunal and we would go through the procedure.

Senator Isnor: I think Senator Blois would know the firm.

Senator Blois: Yes, they had several problems, and that was just one of them.

Senator Molson: In winding up, Mr. Chairman, I just come back to the discussion a little earlier. That word "goods" still bothers me a little, in that when we refer to the Code, the word "products" is used. In Canada we seem to have chosen "goods." I am wondering if everything has been done that should have been done in the draft act to eliminate any doubts such as suggested by

Senator Carter. It may be that we have used that word "goods" through Customs and other legislation throughout and it has worked well and there is no reason to change it; but when you refer to the Code you promptly see the word "products" and not "goods".

Mr. Arthur: I cannot really comment on this, other than to say that in several places we have used terminology which is in keeping with the Code, but which, in our view—or, let me say it this way, in the draftsman's view more appropriately reflects the intent.

Senator Carter: Do you have a definition for "goods"?

Mr. Arthur: In section 2 of the proposed bill, on page 40, section 2(1)(g).

Senator Carter: That is "like goods"; it does not say "goods".

The Acting Chairman: I make the suggestion that when Mr. Arthur comes back he might have an answer that would tell us why the word "product" is used in the Code but is changed to the word "goods" in our draft bill.

Senator Carter: I think we would like to know if it covers raw materials too. I am confused. Does "goods" cover everything?

The Acting Chairman: That is what we will find out.

The committee adjourned.

Thursday, December 12, 1968.

Upon resuming:

Senator T. D'Arcy Leonard (*Acting Chairman*) in the Chair.

The Acting Chairman: Honourable senators, we will continue the consideration of the White Paper on Anti-dumping. The draft bill is enclosed. Mr. Arthur has concluded his preliminary statement, I believe. We did ask him before we completed yesterday to explain the use of the word "goods" in the draft bill and to relate it to other words suggested, such as "products" and "commodities". Have you something further to add to that, Mr. Arthur?

Mr. Arthur: Mr. Chairman, honourable senators, yesterday at the conclusion of our meeting the question arose as to why in the draft bill we used the expression "goods", whereas in the Code the word "product" is

used. I have since then consulted our legal advisers who have assured me that the expression "goods" is broader than the word "products" and that the word "goods" appears throughout the Customs Act. To ensure as much common understanding between the expressions used in the proposed act and in the present legislation, it was their view that the use of the word "goods" would be appropriate in transforming into the proposed legislation the expression "products" or "like products" in the Code.

I would also like to comment that within the proposed legislation in the interpretation section, section 2 (3), there is a provision which says:

For greater certainty this Act shall be considered, for the purposes of the *Customs Act*, to be a law relating to the Customs.

And there are a number of provisions in the Customs Act which are essential to the proper application and interpretation of this proposed legislation on anti-dumping.

If I might, Mr. Chairman, I would just wish to read the definition in the Customs Act relating to the word "goods". This is section 2 (j) of the Customs Act, which reads as follows:

"Goods" means goods, wares and merchandise or movable effects of any kind, including vehicles, horses, cattle and other animals;

I believe, Mr. Chairman, that a question raised by one of the honourable senators yesterday was the matter of whether this would include materials. The answer to that question is yes. That is all I have to say.

The Acting Chairman: Are there any questions on the explanation given by Mr. Arthur? I might ask him, concerning the French version, do we use the same word in the French interpretation of "goods" in our proposed act as in the Code, or is there a different word there also? And is the explanation the same or is the word "product" or its French equivalent in the Code?

Mr. Arthur: My understanding, Mr. Chairman, is that we have used the expression for goods as it appears in the French translation of the Customs Act.

The Acting Chairman: Marchandises.

Mr. Arthur: Marchandises.

The Acting Chairman: So that the same explanation would apply to the French interpretation?

Senator Connolly (Ottawa West): What section are you referring to, Mr. Chairman?

The Acting Chairman: In the proposed act the word "goods" is used in a number of places.

Mr. Arthur: The first time it appears is in the definition section or the interpretation section, section 2 (g).

Senator Molson: I assume no better word than "antidumping" could be found for the French version, Mr. Chairman?

The Acting Chairman: Underpriced is the French expression.

Senator Connolly (Ottawa West): You find it in section 2(1) (c).

The Acting Chairman: In the Code, I believe the translation of underpriced is used.

Senator Connolly (Ottawa West): Perhaps it is worth mentioning in discussing the French and English that the policy now in the Department of Justice is not to take an act and draft it in English and then translate it into French. Rather, it is to write the French as an original rendition, as well as the English, making sure that the one corresponds with the other. I think that is the policy of the drafting section of the Department of Justice. Probably the result is a great deal better. There is more purity in the French version than there used to be when it was translated from the English.

The Acting Chairman: I see in the Code that they actually use the word "le dumping".

Senator Molson: And the word "antidumping".

The Acting Chairman: I do not think there can be much difference in point of view as to what is meant. May I ask the question how are the United States treating the wording in their proposed legislation, or legislation if it is in effect, on the same subject? Do they use a word similar to "goods" even though the Code says "products"? What I am really getting at is whether there is any difference in the application of the anti-dumping code as to the articles covered, when the code uses one word and then we use another word and another country uses another word again? Are we all dealing nevertheless with the same articles?

Senator Molson: Will the end results be the same?

The Acting Chairman: That is the question.

Mr. Arthur: Mr. Chairman, I do not have a copy of the United States Anti-dumping Act with me. My recollections are not as clear as they might be on this point. But I can give the assurance that the use of the word "good" in place of the word "product" is as broad, and would give the coverage in our view that is proposed, as if the word "product" were used.

Indeed, throughout the proposed legislation there are expressions that are familiar and are in use in the present customs administration, and where possible we have used these words in the proposed legislation, of course, ensuring that these give the meaning that is intended in the Code.

The Acting Chairman: Are there any other questions on that point?

Senator Connolly (Ottawa West): And cleared with the trade, too, I suppose? The trades affected?

Mr. Arthur: Yes, sir.

The Acting Chairman: Are there any other questions, then, on the main statement that Mr. Arthur made?

Senator Burchill: Speaking about the United States, Mr. Chairman, I noticed the other day that the United States had taken action against France because France had subsidized certain export industries. Is that applicable to Canada as well?

Mr. Arthur: Mr. Chairman, I believe that the action that the United States took against French imports that they alleged had been subsidized was under their countervailing law, which is different from the anti-dumping law. And we have a countervailing provision in our customs legislation as well.

Senator Molson: Mr. Chairman, yesterday I think Mr. Arthur said that the whole responsibility of instigating action with respect to anti-dumping lay in the hands of the deputy minister. We didn't go into that too fully, but I think there is a section that says that if he decides that an investigation is not justified, and will not initiate it, that it can then actually go to the tribunal. Is this correct? It is in a sense an appeal.

Mr. Arthur: If I may go back on your statement, sir. I hope I did not convey the impression yesterday that only the deputy minister could initiate an investigation. Normally he will commence an investigation on the basis of a complaint from an industry against unfair competition or dumping goods. He may also, of course, on his own initiative commence an investigation. Should the deputy minister in the course of his investigation determine that there is dumping, but that the margin of dumping is such that it would not cause injury, he can terminate the investigation and so advise the complainant. If he should do that there is provision in the proposed legislation that would permit the complainant to appeal to the tribunal whereby he could seek the tribunal's views as to whether or not there was injury, but the complainant is not at liberty to go to the tribunal unless the deputy minister determines that there was dumping. If the deputy minister decides there was not dumping, or that the dumping was negligible, the complainant has no recourse.

Senator Haig: Is there a further appeal from the tribunal to the Exchequer Court?

Mr. Arthur: There is no appeal from the finding of the tribunal on injury. The appeal that is open is an appeal from the ruling of the deputy minister as to the margin of dumping. Once the tribunal has made a finding on injury, the deputy minister then determines the margin of dumping of goods, the definition of goods or the description of the goods that have been dumped. The person against whom the dumping duties are assessed may appeal to the Tariff Board on a matter of fact or to the Exchequer Court on a matter of law.

Senator Connolly (Ottawa West): That is section 19 so far as the Tariff Board is concerned and section 20 so far as the Exchequer Court is concerned.

The Acting Chairman: Is the function of the bill to deal only with the question of injury?

Mr. Arthur: Yes, sir. It has no other function.

Senator Molson: I am wondering if that discretion is not fairly wide, Mr. Chairman, the discretion of the deputy minister in that instance.

The Acting Chairman: And therefore the deputy minister in the first instance is the

only person that deals with the determination of the question of dumping itself.

Mr. Arthur: Yes, if a complaint is made to the deputy minister he first determines if there is dumping, then he determines if that dumping is other than negligible, and if that is the case whether that dumping is likely to cause injury, and if he reaches a conclusion on all of these points, he then makes what is known as a preliminary determination. The preliminary determination is transmitted to the tribunal. The tribunal is obliged within 90 days from the date of the preliminary determination by the deputy minister to issue its order or finding on injury. If it decides that these goods, the dumped goods, have caused injury and it issues an order or finding accordingly, the Deputy Minister of National Revenue then determines the margin of dumping and assesses that margin of dumping against the importer.

The Acting Chairman: Any other questions to Mr. Arthur?

Senator Connolly (Ottawa West): I wanted to ask a question on this. The witness said that the question of injury is the sole determining factor when the deputy minister takes action to refer the matter to a tribunal. By "injury" I take it that that includes both paragraphs (a) and (b) of section 3 which read:

(a) has caused, is causing or is likely to cause material injury to the production in Canada of like goods, or

(b) has materially retarded or is materially retarding the establishment of the production in Canada of like goods,

It seems to me that if one refers to section 13, subparagraph (3), on page 60, the deputy minister or the complainant may refer to the tribunal the question whether there is any evidence that the dumping of the goods has caused, is causing or is likely to cause material injury to the production of like goods. This seems to refer to paragraph (b) of 3:

(b) has materially retarded or is materially retarding the establishment of the production in Canada of like goods,

Mr. Arthur: If I may answer that question other than "Yes" or "No", section 13 is the section which covers the initiating of an investigation and these are the circumstances that the deputy minister is obliged to consider. Going back to section 3 which you mentioned also, this section applies after the tribunal has made an order or finding under

sections 3, 4 and 5 which are the liability sections for dumping duty under the proposed legislation. The circumstances in 13 are where the deputy minister initiates an investigation, whether the dumping of the goods has caused, or is causing etc.,—these are in advance of determination by the tribunal as to injury, whereas section 3 applies after the tribunal has made its finding, and that is why there is a slight difference in the connection of the words there. I believe this is the question that you are raising, sir.

The Acting Chairman: There are two kinds of injuries spelled out...

Senator Connolly (Ottawa West): In subsection 3.

The Acting Chairman: And in subsection 4 too—which I think are applicable. There is one, an actual material injury caused, and the other is a potential injury. Is that not so, Mr. Arthur?

Mr. Arthur: That is correct, yes.

Senator Connolly (Ottawa West): Perhaps you would not mind if I asked you a question in connection with section 21, the Tribunal established.

This may be a policy question and perhaps should not be asked of this witness, but is it intended that the tribunal should be constituted from members of the public, or from officials of the department or the public service? If this is policy, do not answer it.

Mr. Arthur: I was going to respond by saying that these people are to be full-time, and many of the submissions that have been made to the committee in the other place have suggested that they be persons with broad industry experience, but beyond that...

Senator Connolly (Ottawa West): It is up to the Governor in Council?

Mr. Arthur: Yes, sir.

The Acting Chairman: There is another description of them, is there not, which would mean they could not hold any other position?

Mr. Arthur: Yes, subsection 7 of section 21 requires that:

Each member shall devote the whole of his time to the performance of his duties under this Act and shall not accept or hold any office or employment inconsistent with his duties and functions under this Act.

Senator Isnor: Yesterday, Mr. Arthur, you referred to import and export injury. What percentage would apply to export injury? Is there any consideration given to that?

Mr. Arthur: This is a piece of legislation relating to the importation of goods into Canada.

Senator Isnor: But you referred yesterday to export as well.

Mr. Arthur: Mr. Chairman, I referred to exports only in the sense that the International Code which has been accepted by a number of countries—the application of the Code—should be of assistance to our exports in gaining access to those countries. In other words, one of the reasons we participated in the discussions that led up to the signing of this Code was because we were interested in ensuring our exports would have as free access as possible into other countries.

Senator Isnor: But you referred again to the word "export". To what extent will this bill, say, in dollars or on a percentage basis, apply? Have you any estimate of that? I ask because it appears to me there are only one or two cases I have known of down through the years where the imports were affected in the export business. Have I made that clear?

Senator Molson: No, not to me.

Senator Isnor: Well, perhaps I could broaden it a little and say that raw fur felts were brought in as part of a manufactured article to be exported, which had an adverse effect on some of the local manufacturers. What percentage, or has there been any estimate of the percentage, of export business as compared to the import?

Mr. Arthur: As I understand the question, it is: What percentage of imported goods that are incorporated, say, in products that are subsequently exported?

Senator Isnor: Yes.

Mr. Arthur: What percentage of our imports do these goods represent?

Senator Isnor: Right.

Mr. Arthur: I have not any estimate.

The Acting Chairman: I have arranged for Mr. Labarge, the Deputy Minister of National Revenue, to appear before the committee on Wednesday next. I imagine that he might

have more information on just what the effect of our anti-dumping legislation has been in imports and exports. Perhaps we can ask that question again of him.

Senator Isnor: Thank you. We will allow it to stand for now.

The Acting Chairman: We will allow it now, but Mr. Arthur does not seem to have the information to answer the question.

Senator Burchill: Previous to this was our anti-dumping legislation under the Customs Act? Did we not have anti-dumping legislation previous to this?

Mr. Arthur: The anti-dumping provisions are in the Customs Tariff, but the means by which the Deputy Minister of National Revenue would determine "fair market value" and "selling price" are provisions of the Customs Act, and this is one of the matters which will be cleared up by this proposed legislation. It will take it out of both...

Senator Burchill: It will take it out of the Customs Act?

Mr. Arthur: ...and put it into a separate piece of legislation which will cover anti-dumping.

Senator Molson: I suppose Mr. Chairman, there will be a tremendous number of goods where the application of this act will be extremely difficult. I am thinking of things that are based perhaps on a chemical formula, where the changing of one small ingredient may change the composition, and so on. I imagine it can become extraordinarily complex to apply this act. Perhaps that is, again, for National Revenue.

Mr. Arthur: Mr. Chairman, it is more appropriate to ask the officials of the Department of National Revenue, but I would refer the senator to the definition of "like goods", and it will be a matter of interpretation of that definition. Of course, in time it will possibly have to await the decisions of the Tariff Board and, possibly, of the Exchequer Court.

Senator Croll: Mr. Arthur, you will have to forgive me, because I was not here the first meeting, and that was not your fault. What is new here that is not already in existence?

Mr. Arthur: Mr. Chairman, the main difference is the fact that dumping duties, once this legislation becomes law, will not be applied unless injury is proven.

Senator Croll: But that has been the law.

Mr. Arthur: No, sir, under our present legislation dumping duty applies if the selling price to the importer in Canada is less than the fair market value and the goods in question are considered to be "of a class or kind made in Canada."

Senator Connolly (Ottawa West): The fair market value in the country of origin?

Mr. Arthur: The fair market value in the country of origin, that is right, sir. If those conditions are met, it is an automatic application of dumping duty.

Under the proposed legislation, if the selling price to the importer in Canada is less than the normal value, which is an expression instead of "fair market value," dumping duty will not be assessed unless injury has been proven.

The Acting Chairman: And the "class or kind" language disappears out of the proposed act?

Mr. Arthur: Yes.

Senator Connolly (Ottawa West): Taking a practical example, and following what Senator Croll says, would this be the result, say, that you have in an American run of textiles, an over-run, and they sell in that market at a cheap price, cheaper than the original run, let us say, the earlier part of the run. Then those goods are brought in here. Some of those end pieces are brought in here and are going to undersell, presumably, the Canadian goods of a like character. But there is going to be some distinction between those specific goods that are brought in and the ones that are manufactured in Canada. The consumer there has an opportunity of getting something cheaper than normally he would. I suppose you cannot answer this question, but the question is whether or not some injury is being done to Canadian manufacturers or retailers or wholesalers is going to depend upon first of all whether or not the goods are considered to be like goods and secondly whether or not the tribunal considers that there has been damage.

Mr. Arthur: Mr. Chairman, I think that the circumstances that have just been outlined may not fall within the terms of this anti-dumping bill, particularly if they are end of season or end of run. If it were looked at under the proposed legislation, it would be a matter of whether this was in the ordinary

course of trade and under competitive conditions and so on. If it is ruled out of that, it is possible under this proposed legislation for the deputy minister to construct a value or to look at the goods sold by others and so on.

But I might suggest to your, sir, that the circumstances that you have outlined may well be dealt with under other than this proposed legislation. As you know, we have a provision in the Customs Act now, section 40(a)(7), which permits the Governor in Council to establish arbitrary valuations. This is the consequential amendment of this proposed legislation. The change is from establishing arbitrary valuation to applying a surtax. The principle behind doing this remains identical, and I would suggest to you that in the circumstances that you outlined it may be that these goods are not dumped in the normal sense, in that you could find in the United States market a price similar to the price that was charged to the Canadian importer. But, on the other hand, these imports may have a very disruptive effect on Canadian production, and under those circumstances...

Senator Connolly (Ottawa West): That is going to be the test.

Mr. Arthur: Under those circumstances it would be open to use, I suggest, the arbitrary provision which is provided for under the proposed section 7(1a) of the Customs Tariff the consequential amendment, as it is referred to in the proposed legislation, is on page 96. As I mentioned, the only thing that we are doing here is moving it into the Customs Tariff and changing from the assessment of an arbitrary valuation to the assessment of a surtax.

One matter that arises under action under this section is that first it is an action by the Governor in Council and secondly it is open to the country against whom we take the action to request compensation. This is a section which, for instance, has been applied on occasion to the importation of turkeys and so on. But the reason I have gone into this is that it may be considered in more than one way, and I would suggest to you probably under the latter section rather than under the proposed anti-dumping.

Senator Connolly (Ottawa West): Normally, heretofore, when it came to a question of assessing dumping, the department or the minister would look at the fair market value in the country of origin and, in the case that I cited of "end of season", as you put it, or

"end of run", as I put it, he would not consider that to be the fair market value.

Mr. Arthur: That is right.

Senator Connolly (Ottawa West): And he would assess dumping.

Mr. Arthur: That is right.

Senator Connolly (Ottawa West): He would still be able to do that.

Mr. Arthur: Yes, sir.

Senator Connolly (Ottawa West): But in addition to that he has got this further arm provided in section 3, this further club, which says that if there is injury to a segment of the Canadian market then in that case, too, he can make that a factor as well.

Mr. Arthur: Mr. Chairman, he will only be able to apply dumping duty in the future if there is injury.

The Acting Chairman: The other case is dealt with and will continue to be dealt with under what is not anti-dumping legislation.

Senator Connolly (Ottawa West): In other words, the cheap goods coming in, even if they are at prices depressed because they are end of run goods or end of season goods, if they do not disrupt Canadian industry are not going to be subject to the dump.

Mr. Arthur: Not under the proposed anti-dumping bill here, sir. But what I am suggesting is that they may well be handled under the consequential amendment which is outside, really, the proposed anti-dumping bill, but is one which we are undertaking at this time because of representations that we have received that we should not be using dumping duties against non-dump imports, which are having a disruptive effect on a segment of Canadian industry.

The Acting Chairman: In other words, we have had a section in our Customs Act which was within the terms permitted by GATT which did allow us to impose special remedies, duties, in cases, for example, of seasonal fruits or in the kinds of case where perhaps there was a distressed selling, and this was not under the heading of dumping. But now in this proposed dumping bill it is a consequential amendment to the Customs Act so as to continue that power that we have been exercising in the past not on grounds of dumping but on grounds of injury to industry in Canada, and the only change there, as I

understand it from Mr. Arthur, is that the power still exists but there is a change in the calculation of the penalty, shall we say, because instead of being a certain duty it will now be a tax. Is that correct?

Mr. Arthur: That is correct.

Senator Croll: As I understand it, the Customs Department have always used the provision of injury to industry. For instance, Senator Connolly spoke of textiles, particularly the end run on textiles that come over here from the United States and from Japan. Are we weakening, strengthening or are we codifying our approach? What are we doing?

Mr. Arthur: Mr. Chairman, the basis for determining what would be a proper, normal value or fair market value for those commodities is as broad under the proposed legislation as it is under the existing legislation. Under the proposed legislation, however, there must be a determination of injury before the dumping duties may be applied.

Senator Croll: But, Mr. Arthur, there always has been. It is all very well for you to shake your head, Mr. Chairman, but I have had some experience of these things over the years, particularly with textiles. One of the reasons given is that there was injury to the existing industry and in consequence he would say "I apply the anti-dumping provision."

Mr. Arthur: In the present legislation there is no requirement that injury be proven. There may be an assumption made that if the goods continued to be dumped there would be injury to Canadian industry, but that has not been one of the conditions that the Department of National Revenue has had to satisfy before applying dumping duty under the existing legislation.

Senator Connolly (Ottawa West): Now they will have to.

Mr. Arthur: They will have to on the basis...

Senator Connolly (Ottawa West): What you are saying, Mr. Arthur, is that heretofore there has been a mathematical calculation. It is a question that the goods were sold at a certain price at a certain time in the country of origin and that that price was lower down there. Then they were sent into Canada at that lower price and the dump was calculated on the original price, and the importer paid the difference between the original price and

the price of import which price was the amount by which the dump was calculated.

Senator Isnor: That is not the whole story.

Senator Connolly (Ottawa West): Not the whole story, but at least a part of it.

Mr. Arthur: I think, Mr. Chairman, Senator Connolly's illustration refers to goods which would have had to be considered of a class or kind made in Canada, and the dumping duty could only equal 50 per cent ad valorem under the present legislation. Now in order to obtain a class or kind ruling there must be a production in Canada equal to approximately 10 per cent of demand. Under the proposed legislation if injury is proven it will provide dumping duty being assessed against products even if there isn't 10 per cent production in Canada, and the margin of dumping under the proposed legislation is the difference between the normal value in the country of export and the importer's purchase price with no limitation such as 50 per cent ad valorem as exists under the present legislation.

The Acting Chairman: Are there any more supplementary questions? Senator Carter is next on my list.

Senator Carter: My question has been covered, Mr. Chairman.

The Acting Chairman: Any more questions?

Senator Lang: I presume the theory behind this legislation is to provide less protection than now exists. Am I correct?

Senator Croll: No, no.

Senator Lang: Well, less discretion.

Senator Connolly (Ottawa West): I would think less discretion but more protection.

Senator Croll: I gather what you are providing here with this little variation is a tribunal you haven't got now where you can go other than the ministerial level—in other words you are providing a tribunal where you can take a case if you don't agree with the deputy minister.

Senator Connolly (Ottawa West): You could always go to the Tariff Board.

Senator Croll: This is like a Tax Appeal Board.

Mr. Arthur: Mr. Chairman, I don't know a great deal about the Tax Appeal Board, but I would not suggest that the actions of the

tribunal or the function of the tribunal is to act as an appeal court. Its sole function is to determine whether the dumped goods are causing or are likely to cause injury or retardation to Canadian industry. Now the assumption would be that the tribunal would wish to take into account a number of indices that are suggested in the code, and that they would want to gather as much information as they possibly could about the effect of the imported dumped goods on Canadian industry. Once the tribunal does make its order or finding, there is no appeal from an order or finding of the tribunal, and the deputy minister then will determine the margin of dumping, both the margin of dumping and the description of the goods against which the deputy minister assesses a margin of dumping. That calculation or that amount of duty may be appealed on a matter of fact to the Tariff Board or on a matter of law to the Exchequer Court. The same appeal provisions that exist in the present legislation are carried forward into the proposed legislation.

The Acting Chairman: Might I just say to Senator Lang that in essence this proposed bill is to carry out an international agreement to which Canada was a party.

Senator Lang: And which international agreement is aimed at freeing trade.

The Acting Chairman: Which international agreement is aimed at removing things which interfere with the normal channels of trade, and which is applicable throughout all trading countries, and it is deemed to be something that should be, and that we all agree should be stopped whether things are being dumped into Canada or whether Canada is dumping things elsewhere. It is a—perhaps cancer is too strong a word—but it is something that interferes with the normal channels of trade, and all countries recognizing this say "Let us abolish it all on some kind of reciprocal basis." And this was agreed to as part of the Kennedy Round and we agreed as did other countries and now we are called upon to implement the agreement. The effect on any one individual country may be good or bad as between the importer and the exporter, but the overall effect is deemed to be good by all countries that have signed the accord.

Senator Molson: From the point of view of Canadian industry, I don't think there is much doubt that this may ease the flow of trade, but from a protection point of view I would hazard a guess that the protection is

reduced because the necessity of proving injury is not going to be simple. It is more complicated than the deputy minister being able to take two prices and say there is dumping and then promptly going on to make an assessment. That may have been an unsatisfactory way of dealing with it, but it was automatic and it was rapid.

Now there are the time and the information required to prove injury, and I think it is fair to say it is a fairly complicated matter that may make it a little more difficult to have anti-dumping duties imposed.

The Acting Chairman: Do you wish to say anything to that, Mr. Arthur?

Mr. Arthur: Mr. Chairman, I would only say that in listening to representations from industry in another committee they did not share your view, sir, that the present arrangement might be, or has been or will be more rapid than that proposed under this legislation.

Again, I think it is fair to say that one of the criticisms that have been levied against the dumping duty arrangements that now exist is that it was automatic and frequently was applied against products which were not in fact produced in Canada, and, therefore, afforded protection when no protection was required. This has been one of the criticisms our trading partners have levied against us. Within the proposed procedures of this bill there is this requirement on the Tribunal to report within three months. I would suggest here the procedures that have been developed, even though now injury needs to be proven, will not prove to be any more onerous—or, at least, it is not anticipated they will be any more onerous than at the present time.

Again, I think a most important feature of this proposed legislation is the fact that it is possible to give protection to an industry commencing in Canada, whereas under the present legislation there must be the 10 per cent production before you can get a "class or kind made in Canada" ruling.

Senator Carter: Mr. Chairman, what are the mechanics of this? When a case comes up, does the person who imports the goods have to pay the full amount, and then get a drawback from Customs? Does he have to pay first, and then get a refund? How does this work? If an anti-dumping duty is imposed, does he pay it all and get a refund on it, or

does he wait for somebody to pass judgment and then pay or not?

Mr. Arthur: The dumping duty is not assessed really until after the fact. Under the proposed bill, if a complaint is made to the Deputy Minister and he, in due course, makes a preliminary determination that there is dumping and that that dumping is likely to cause injury, from the date of his preliminary determination until the date of the order or finding of the tribunal, the Deputy Minister can levy a provisional duty or he can take another form of security.

Senator Croll: But the answer to the question is that the duty is imposed, you pay the duty, and if you win you get it back.

Mr. Arthur: In those cases, yes, where the tribunal did not support the Deputy Minister's contention there was injury. That is correct.

Senator Croll: And the chances of getting it back are pretty well nil, I can advise you on that.

Senator Lang: Mr. Chairman, I am wondering under what law Great Britain imposed the recent restrictions on imports requiring the payment of half the value of the goods on landing.

Mr. Arthur: I believe that was a special measure they took under the emergency powers.

Senator Lang: Which, presumably, would be available to us if we had need of them?

Mr. Arthur: There have been occasions in the past when we have taken emergency action against imports, in times of balance of payments difficulties.

Senator Lang: How do we do that, under what statute?

Mr. Arthur: There is an Emergency Powers Act, but certainly that was not it. I believe it was taken under...

The Acting Chairman: You did it under one of the existing acts, the Customs Act?

Mr. Arthur: Yes, under the provisions of the Customs Tariff.

Senator Lang: The Customs Act itself?

Mr. Arthur: Yes.

Senator Lang: And GATT does not require you to get rid of that provision?

Mr. Arthur: No.

The Acting Chairman: We asked that question of Dr. Annis the other day, when we were dealing with the Customs Tariff. While it is permitted in times of balance-of-trade problems or urgency problems for a limited length of time, under the provisions of GATT, as I understand the answer given the other day, the country imposing it immediately comes under the scrutiny of GATT to see whether any order should be modified or changed or ended, is that correct?

Mr. Arthur: That is correct, sir.

Senator Connolly (Ottawa West): Suppose you get a case of an industry in Canada which is either non-viable or marginally viable, and goods come in which are likely to hurt it further. It may perhaps be headed for bankruptcy anyway, and maybe it is a non-viable industry. I suppose it would be up to the Tribunal to decide whether, in a case like that, material injury was done and, perhaps, taking into account the type of industry concerned and the type of production that is carried on in Canada.

Mr. Arthur: Mr. Chairman, the definition of "domestic industry" is the total production of a product in the country. I was not certain whether you were referring to one company.

Senator Connolly (Ottawa West): No. This is very hypothetical because I had no company in mind. There are industries which are established in the country that ultimately prove to be non-viable; they struggle along for a while, and sometimes they make it and sometimes they go under. In the meantime, perhaps goods similar to those manufactured by them are brought in here and conceivably or obviously at a price lower than they can sell. The question then arises: Has there been material injury to production in Canada? There is nothing in this bill which would indicate that the character of the industry itself or its prospects would enter into the consideration of the board of inquiry—is it?

Mr. Arthur: The Tribunal.

Senator Connolly (Ottawa West): Yes, the Tribunal.

Mr. Arthur: No, there is nothing in the proposed legislation giving any direction to the tribunal as to how it shall determine injury. In the Code it does suggest that there is a number of indices which the national

authority should look at in their deliberations on injury.

If I might read them to you, this is on page 14, Article 3(b):

The evaluation of injury—that is the evaluation of the effects of the dumped imports on the industry in question—shall be based on examination of all factors having a bearing on the state of the industry in question, such as: development and prospects with regard to turnover, market share, profits, prices (including the extent to which the delivered, duty-paid price is lower or higher than the comparable price for the like product prevailing in the course of normal commercial transactions in the importing country), export performance, employment, volume of dumped and other imports, utilization of capacity of domestic industry, and productivity and restrictive trade practices.

And I think this is a very important sentence.

No one or several of these factors can necessarily give decisive guidance.

Senator Connolly (Ottawa West): That answers the question.

Senator Burchill: A few moments ago there was mention of the countervailing duty in the matter of subsidy to an industry. What about depreciated currency of the exporting country? Is that covered in the same way or has it ever arisen at all?

Mr. Arthur: I do not believe it has, Mr. Chairman, but I would suggest that if Senator Burchill would take that question and place it before the officials of the National Revenue I think he would get a clearer answer from them.

The Acting Chairman: We will ask that again.

Senator Burchill: It just occurred to me that that would make quite a difference to Canadian currency in import value.

Mr. Arthur: You do convert. You use Canadian currency in deciding the valuation. But I think you said a depreciated currency.

The Acting Chairman: If the franc were devalued, whether or not we would impose some type of countervailing duty, I think that was the word used before, some type of protection as against the depreciated currency, that is the question.

Mr. Arthur: I would think the answer to that would be no, sir. You would not.

The Acting Chairman: In a sense, the 50 per cent deposit required by the United Kingdom was provoked by the uncertainty of the exchange rates, no doubt.

Senator Carter: While we are on that point, Mr. Chairman, some European countries have put on not an export subsidy but some sort of export concession which worked like a subsidy. France is one, and the Common Market countries seem to be doing it with each other. I just wondered how that would be handled? Would that be just the same as though it were depreciated currency?

The Acting Chairman: I would point out that we are getting a little bit beyond the anti-dumping bill that we are supposed to be considering. However, if it is a matter of interest to the committee...

Mr. Arthur: Mr. Chairman, what you endeavour to do is to get a normal value, taking into account the trade levels, taxation and so on, making allowances for all of these. These are provided for in the regulations or will be provided in the regulations that are drafted under this proposed legislation.

Now, on any tax, if the tax is remitted when the goods are exported, then you take the amount of that tax out in determining normal value—in other words, you are determining a normal value less those taxes that are remitted on export.

Senator Carter: But it amounts to what we were talking about yesterday, a two-price system. This is the normal price they have, but, when they export it, the excise tax or whatever is imposed in that country is remitted, or some compensation is paid following it and then that goes out to the purchasing country at a lower price, which is lower than the normal selling price in the country of origin. My understanding is that the United States in particular have regarded this a violation of GATT and have threatened to put on some countervailing tax.

Mr. Arthur: I believe the tax you were talking about, sir, is an import tax, which really applies to imports into the Common Market countries, and that is what the United States are complaining about. They can handle under their existing legislation any export subsidies that are given.

Senator Carter: Even we ourselves have exporting incentives, do we not?

The Acting Chairman: I think I should draw the committee's attention to the fact that the committee of the House of Commons has recommended certain amendments to this draft bill that is in our White Paper, and that that report is before the House of Commons. The amendments are contained in *Votes and Proceedings* No. 60 for Monday, December 9, and therefore when a bill reaches us it might or might not contain these amendments. I think Mr. Arthur might say something to us about the extent or import of the proposed amendments that are not in the White Paper before us.

Senator Lang: I presume any amendments have to conform with the agreement?

Mr. Arthur: With the code, sir?

Senator Lang: Yes.

Mr. Arthur: Oh, yes.

Senator Lang: So these amendments would not affect our compliance with the agreement?

Mr. Arthur: No, sir.

Senator Connolly (Ottawa West): Let us hear Mr. Arthur discuss it, as the Chairman suggested.

Mr. Arthur: Most of the amendments proposed are really matters of clarification of the draft legislation. The main proposal made by the other committee is the deletion in its entirety of section 30, appearing on page 86 of the White Paper. Section 30 requires the tribunal to seek the advice of a panel. The other committee has suggested that that section be deleted in its entirety.

The Acting Chairman: The panel consisting of certain deputy ministers?

Mr. Arthur: The deputy ministers. That is the main change the other committee is proposing.

The Acting Chairman: This would not be in violation of the code?

Mr. Arthur: No, sir. The procedure that the national authorities, as the code says, set up is a matter for the individual countries, so the deletion of this section has no effect on our obligations.

Senator Connolly (Ottawa West): I would think from subsection (3) of section 30 that is undoubtedly true, because the tribunal is not

bound by any advice received on any matter from the panel.

Mr. Arthur: That is right.

Senator Connolly (Ottawa West): One wonders why the suggestion of a panel was made at all.

The Acting Chairman: It is a hint. It is not something they have to conform with.

Senator Connolly (Ottawa West): No.

The Acting Chairman: Legislatively it is simply a suggestion, is it not?

Senator Connolly (Ottawa West): But that will not in any way violate our agreement under the treaty?

Mr. Arthur: No, sir.

Senator Connolly (Ottawa West): Were there any other amendments?

Senator Cook: I suppose all these departments would have a right to appear and argue.

Senator Haig: Would the complainants have a right of appeal before the tribunal on the hearing?

Mr. Arthur: I would assume the tribunal would want to question the complainants. Of course, it is left to the tribunal to set up its own rules of procedure, but I would assume that in most instances they would probably wish to.

Senator Molson: Does not section 29 (1) cover that?

The Acting Chairman: "All parties to a hearing before the Tribunal may appear".

Senator Molson: The complainant would be a party, I would assume.

The Acting Chairman: I would think the complainant must be a party.

Senator Connolly (Ottawa West): There cannot be any question about that in view of section 13. I still read section 13 (3) as permitting either the department or a complainant to get to the tribunal simply by filing a request to do so. And then there is an appeal on the question of fact from the tribunal. I am referring now to page 60.

Senator Molson: But only on the question of injury. Not on the question of dumping. It is simply on injury.

Senator Connolly (Ottawa West): Yes.

Mr. Arthur: If I may take you through this again, if it is agreeable.

Senator Connolly (Ottawa West): If you have done it before, I can get it from one of my colleagues.

The Acting Chairman: Well, Mr. Arthur can answer the question.

Mr. Arthur: Mr. Chairman, section 13 says that the deputy minister shall initiate an investigation respecting the dumping of any goods on his own initiative or on receipt of a complaint in writing and if he is of the opinion that there is evidence that the goods have been or are being dumped or if he is of the opinion that there is evidence or if the tribunal advises that it is of the opinion that there is evidence, in circumstances where he seeks the advice of the tribunal, then I think the next section...

Senator Connolly (Ottawa West): He can determine up to this point whether in fact there is dumping and/or whether there is injury.

Mr. Arthur: No, sir. It is just the matter of dumping at this point of time. Then going on from there the deputy minister may then decide not to initiate an investigation or not to proceed with an investigation if there is no evidence of injury or retardation. Now if that is the case either he or the complainant may refer the matter to the tribunal but only after there has been a determination of dumping. In other words, the deputy minister must agree that there is dumping, and if he decides there is no dumping, of course, then he doesn't continue his investigation.

Senator Connolly (Ottawa West): Perhaps you wouldn't mind if I interrupt again at this point. Suppose you had a producer in Canada who was convinced that there was in fact dumping and the deputy minister found after his investigation that in his opinion there was no dumping—has a Canadian producer any recourse beyond that?

Mr. Arthur: The only recourse he would have would be to make an importation himself and then appeal that to the Tariff Board, but to answer your question directly, the answer is "No", unless he went through that procedure.

Senator Connolly (Ottawa West): Supposing he isn't going to take a chance on that and he

goes on under subsection (3) of section 13 on the question of injury or retardation and he succeeds. Has he then defeated the deputy minister or the department, because in effect if he proves injury or retardation is he not proving dumping as well?

Mr. Arthur: Mr. Chairman, I would suggest that follows, but I would direct Senator Connolly to subsection (3) of section 13 which says:

(3) Where the Deputy Minister, after receipt of a written complaint respecting the dumping of any goods,...

And these are the operative words...

...decides not to initiate an investigation by reason only that in his opinion there is no evidence of material injury or retardation...

And so on. In other words, that there has been dumping but there has been no injury. Under those circumstances it is possible for the complainant to appeal to the tribunal or to refer the matter to the tribunal but only on the question whether there is any evidence that the dumping of the goods has caused, is causing or is likely to cause material injury, and so on. But the step that must be agreed, in order to refer the matter to the tribunal is, has there been dumping?—and I think, sir, in the illustration that you gave me, the deputy minister had decided there was no dumping.

Senator Connolly (Ottawa West): No dumping, that is right.

Mr. Arthur: From that decision of the deputy minister, under the proposed legislation there is no appeal, other than as I suggested to you.

The Chairman: Why, then, does the wording say in subsection (3): "The complainant within such period from the date of the notice referred to in subsection (2)...". Now, that notice is a notice which the complainant received, that the deputy minister has decided not to initiate an investigation.

Mr. Arthur: Mr. Chairman, he decides to do this because he did not consider that there was any injury or retardation.

The Chairman: Subsection (1) says: "The deputy minister shall forthwith call an investigation to be initiated respecting the dumping of any goods...".

Mr. Arthur: Later it says that if he (a) is of opinion that the goods have been or are being dumped.

The Chairman: I see.

Senator Carter: You have to have the opinion in first, before he starts the investigation, is that it?

Senator Molson: He has absolute discretion in the question of dumping and he is the czar of dumping. In other words, no one else can do anything about it.

The Chairman: If he decides there is no dumping...

Senator Connolly (Ottawa West): Let me interrupt right there. If the complainant, or the person affected, still thinks the deputy minister is wrong, that there is dumping, he still has his recourse on that point to the Tariff Board, under the present law?

Mr. Arthur: No, he does not, unless there is an actual importation and he appeals that importation to the Tariff Board.

Senator Connolly (Ottawa West): Could he not do it on the importation claimed of, whoever brings in the goods, the deputy minister says this has been dumped.

Mr. Arthur: If he brings in the goods and there is a finding of injury he could appeal to the Tariff Board.

Senator Connolly (Ottawa West): He does not have to suffer?

Mr. Arthur: Oh, no.

The Chairman: The case we are talking about is that where somebody has been injured by what he thinks is dumping. He is not the importer but somebody else and he is turned down by the deputy minister. The question is, is there any recourse, and the answer seems to be no.

Senator Connolly (Ottawa West): On dumping?

The Chairman: That is right.

Senator Connolly (Ottawa West): On dumping, he would have to bring in an import, and he would have an appeal.

Mr. Arthur: That is right.

Senator Molson: To the Tariff Board.

Senator Connolly (Ottawa West): That is right.

Senator Molson: Which would be an extraordinarily lengthy procedure.

Senator Connolly (Ottawa West): You are out of the poor man's court once you are there.

Senator Molson: You are out of business.

Senator Connolly (Ottawa West): But might he not yet succeed using the tribunal under subsection (3) of section 13 by proving to the tribunal that there has been injury or retardation? Does it not follow that if that happens it comes as a result of dumping and, in effect, the deputy minister's decision on dumping is found to be wrong by the tribunal.

Senator Cook: But he could not get before the tribunal.

Senator Connolly (Ottawa West): If you read subsection 3 you find it provides:

Where the Deputy Minister, after receipt of a written complaint respecting the dumping of any goods, decides not to initiate an investigation by reason only that in his opinion there is no evidence of material injury or retardation...

(a) the deputy minister, or

(b) the complainant... may refer to the

Tribunal the question...

The Acting Chairman: I think we have certainly come to the conclusion that on the wording of this act as it is now the deputy minister is the only one who can decide whether there is or is not dumping. There is no appeal from his decision.

Senator Connolly (Ottawa West): Then, I guess my only question, and the thing that is troubling me, is this: If the appeal is made on the ground of injury or retardation, and it succeeds in the tribunal, does not that indirectly disprove the...

The Acting Chairman: It cannot get to the tribunal.

Senator Connolly (Ottawa West): Yes, you can get to the tribunal if you say that there has been injury or retardation. Subsection (3) says that.

The Acting Chairman: And only if there has been dumping.

Mr. Arthur: Mr. Chairman, I should like to refer Senator Connolly again to the wording of that subsection. It is:

...decides not to initiate an investigation by reason only that in his opinion there is no evidence of material injury...

In other words, the deputy minister has decided that there is dumping, but he has also decided not to go beyond that and not to initiate an investigation by reason only that he is of the opinion that there is no evidence of material injury or retardation, or that he has acknowledged there was dumping but there is not any...

The Acting Chairman: And then the right to go to the tribunal takes effect?

Mr. Arthur: That is right. Then the complainant can go to the tribunal on the question of whether there is any evidence that the dumping of the goods has caused, is causing, or is likely to cause...

The Acting Chairman: What is running through our minds is the question of whether the tribunal should also have the right to determine dumping.

Senator Burchill: There can be dumping, then, without any injury?

Mr. Arthur: That is right, sir.

The Acting Chairman: No doubt this has been considered. Is there some reason that you can give us why the decision on dumping itself is deemed to be best and finally decided by the deputy minister?

Mr. Arthur: Well, Mr. Chairman, there is an appeal procedure on dumping, which is to the Tariff Board, and, on matters of law, to the Exchequer Court.

The Acting Chairman: I see.

Senator Connolly (Ottawa West): This is the poor man's court. Would it violate the

treaty, or negate it, in any way if there was an appeal to the tribunal on the question of dumping itself, and the deputy minister's decision that there was no dumping?

Mr. Arthur: Mr. Chairman, to answer that question specifically I would have to say: No. But, there is an established appeal procedure on dumping.

Senator Connolly (Ottawa West): Despite the fact that it is more expensive it is there, and despite the fact that it is lengthy it is there?

The Acting Chairman: The difficulty for a person who might be a complainant to find a way of getting to the appeal board would not be present if he were not the actual importer himself but was complaining about an importer.

Senator Molson: And in practice, Mr. Chairman, the length of time that would ensue before any action could be taken.

The Acting Chairman: I think we have perhaps got into a question of policy here. I would point out that it is one o'clock. I do not know whether we can settle this particular point by any further discussion. Shall we adjourn until the next meeting of the committee, which, I presume, will be on Wednesday next at 11 a.m.

Senator Haig: Could we make it 10 a.m., Mr. Chairman?

Hon. Senators: Agreed.

The Acting Chairman: Very well, 10 a.m.

The committee adjourned.

APPENDIX "A"

Proposed Draft Regulations
Relating to Sections 9 and 10
of Draft Anti-Dumping Bill

1. For the purpose of determining the normal value of any goods imported into Canada, the period referred to in section 9(1)(c) of the Act in relation to the said sale is the period ending on the day of the said sale and commencing (—) days immediately preceding that day or for such longer period, as in the opinion of the Deputy Minister, is required by virtue of the nature of the trade.

2. The sales of like goods, the prices of which are used to compute the normal value of any goods shall be those sales of goods made to purchasers who are at the same or at substantially the same trade level as the importer, and

(a) that are in the same or substantially the same quantities as the sale of goods to the importer, or

(b) in the event that the goods were not sold in the same or substantially the same quantities in the country of export as the sale of goods to the importer

(i) if the quantity sold to the importer is larger than the largest quantity sold for home consumption, that are in the largest quantity sold for home consumption, or

(ii) if the quantity sold to the importer is smaller than the smallest quantity sold for home consumption, that are in the smallest quantity sold for home consumption.

(c) sub-section to the same effect as section 36, subsection 2, para (c) of Customs Act.

3.(1) The normal value of any goods, as otherwise determined, may be adjusted by an allowance for quantity only if

(a) the exporter in the six-month period immediately preceding the date of the sale to the importer has granted quantity discounts of at least the same magnitude with respect to twenty per cent or more of the total quantity of like goods sold for home consumption and such discount had been freely available to all purchasers, or

(b) the Deputy Minister is satisfied that such a discount is warranted on the basis of savings specifically attributable to the quantities involved.

(2) Notwithstanding sub-section (1), where the quantity of the goods sold to the importer in Canada was smaller than the smallest quantity of goods used in computing the normal value of the goods, the said normal value of the goods, as otherwise determined, shall be increased by an allowance to an amount which, in the opinion of the Deputy Minister, reflects the price for which such smaller quantity would be sold for home consumption.

4. The normal value of any goods, as otherwise determined, may be adjusted by an allowance, which, in the opinion of the Deputy Minister, reflects the value of any differences in quality, structure, design or material and any other difference between the goods sold for home consumption and those exported to Canada.

5. The normal value of any goods, as otherwise determined, may be adjusted by the deduction of an allowance on account of any deferred discounts granted by the exporter in connection with the goods purchased by the importer if

(a) the discounts were shown on the invoice at the time of importation of the goods,

(b) the discounts are not greater in percentage and not more favourable in terms than those granted generally by the exporter on the sales of goods used in determining the normal value of the goods, and

(c) the importer has provided the Deputy Minister with an undertaking that he will comply with the terms and conditions relating thereto.

6. The normal value of any goods, as otherwise determined, may be adjusted by deduct-

ing an allowance on account of a discount for cash if

(a) the terms and conditions of the discount are set out on the invoice,

(b) the discount is similar in percentage and terms with that granted generally by the exporter on the sales of like goods that are used in determining the normal value of the goods and

(c) the Deputy Minister is satisfied that the importer has earned or will earn the discount in accordance with the terms and conditions relating thereto.

7. The normal value of any goods, as otherwise determined, may be adjusted by deducting an allowance on account of the cost of transportation from the place of shipment to purchasers for home consumption.

(a) if the like goods are sold generally for home consumption by the exporter in the country of export at a common delivered price (freight prepaid or allowed) to all destinations in the country of export or in that zone in the country of export in which the place of direct shipment to Canada is located, that under ordinary commercial practice of the country of export is considered to be a common transportation zone,

(b) subject to paragraph (c), in an amount not greater than the average cost of freight prepaid or allowed by the exporter on the sales of like goods in the country or zone therein, and

(c) not exceeding the actual charges for transportation of the goods to the importer.

8. In the event that there were not sufficient number of sales of like goods made to purchasers for home consumption in the country of export who are at the same or substantially the same trade level as the importer of the goods but there were a sufficient number of sales of like goods made to purchasers for home consumption at a level subsequent to that of the importer, the latter sales shall be used to compute the normal value of goods and the normal value of the goods so determined may be adjusted by deducting an allowance

(a) not exceeding the discount that is freely available on sales by other vendors in the country of export of like goods, to purchasers for home consumption who were at the same trade level as that of the importer, or

(b) where the information referred to in paragraph (a) is not available, not exceeding such amount as in the opinion of the Deputy Minister represents the cost incurred by the exporter in respect of sales for home consumption for carrying out the functions normally performed at the trade level of the importer provided

(1) the exporter did not perform these functions on sales to the Canadian importer,

(2) the exporter did not carry out these functions in respect of the sale of the said goods in Canada,

(3) the allowance does not exceed the actual cost of carrying out these functions in Canada.

9. The normal value of any goods, as otherwise determined, may be adjusted by deducting therefrom the amount of any taxes and duties levied on the sales of like goods when destined for home consumption that are not borne by the goods sold to the importer in Canada.

10. All computations shall be made at the same exchange rate which shall be the exchange rate prevailing on the date of shipment to Canada.

11. For purposes of section 9(3), a sufficient number of sales with reference to any goods in a prescribed period means sales of those goods during that period in such quantities that, if the quantity of the goods sold to Canada in the period were to be deducted from the total quantity of goods sold throughout that period, at least twenty-five per cent of the remainder would have been sold for home consumption.

12. [Regulation to define sufficient number of sales for purposes of section 9(2).]

13.(1) For the purposes of paragraph (a) of sub-section (1) of Section 10, the "exporter's sale price" means the price at which the goods are sold or agreed to be sold to the Canadian importer less the amount, if any, whether or not included in such price, for (1) any additional costs, charges and expenses, incurred by the exporter incident to preparing the goods for shipment to Canada which are not generally incurred on home market sales, (a) all other costs, charges and expenses by or for the account of the exporter resulting from or arising from the exportation or

after the shipment of the goods from the place described in paragraph (d) of sub-section (1) of Section 9.

13.(2) For the purposes of paragraph (b) of sub-section (1) of Section 10, the "importer's purchase price" means the price at which such merchandise has been purchased or agreed to be purchased by the importer less, the amount, if any, whether or not included in such price, for (1) any additional costs,

charges, and expenses incident to preparing the goods for shipment to Canada, over and above those normally incurred by the exporter on home market sales, which are not for the account of the importer, and (2) all other costs, charges and expenses resulting from or arising from the exportation or after the shipment of the goods from the place described in paragraph (d) of sub-section (1) of Section 9 which are not for the account of the importer.



First Session—Twenty-eighth Parliament

1968

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

The Honourable T. D'ARCY LEONARD, *Acting Chairman*

No. 13

WEDNESDAY, DECEMBER 18th, 1968

Third and Final Proceedings on the
"WHITE PAPER ON ANTI-DUMPING".

WITNESSES:

Department of National Revenue: R. C. Labarge, Deputy Minister; A. R. Hind, Assistant Deputy Minister; and H. D. MacDermid, Chief, Evaluation Section.

Department of Finance: C. D. Arthur, Deputy Director, International Economic Relations Division.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Fergusson	Macnaughton
Aseltine	Gélinas	McDonald
Beaubien (<i>Bedford</i>)	Gouin	Molson
Beaubien (<i>Provencher</i>)	Grosart	O'Leary (<i>Carleton</i>)
Benidickson	Haig	Paterson
Blois	Hayden	Pearson
Bourget	Hays	Phillips (<i>Prince</i>)
Burchill	Inman	Rattenbury
Carter	Irvine	Roebuck
Choquette	Isnor	Smith (<i>Queens-</i>
Connolly (<i>Ottawa West</i>)	Kinley	<i>Shelburne</i>)
Cook	Laird	Thorvaldson
Croll	Lang	Vaillancourt
Desruisseaux	Leonard	Walker
Dessureault	Macdonald	Welch
Everett	(<i>Cape Breton</i>)	White
Farris	MacKenzie	Willis—(49)

Ex Officio members: Flynn and Martin.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Monday, December 9th, 1968:

"With leave of the Senate,

The Honourable Senator McDonald moved, seconded by the Honourable Senator Langlois:

That the Standing Committee on Banking and Commerce be authorized to examine and report upon the White Paper on Anti-Dumping dated September, 1968, tabled today; and

That the Committee be empowered to send for persons, papers and records and to print its proceedings upon the said White Paper on Anti-Dumping.

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, December 18th, 1968.

(14)

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.00 a.m.

Present: The Honourable Senators Leonard (*Acting Chairman*), Benidickson, Carter, Connolly (*Ottawa West*), Cook, Everett, Fergusson, Flynn, Gouin, Haig, Hays, Inman, Irvine, Laird, McDonald, Molson and Thorvaldson.—(17)

In attendance:

E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

R. J. Batt, Assistant Law Clerk and Parliamentary Counsel, and Chief Clerk of Committees.

The White Paper on Anti-Dumping was further examined.

The following witnesses appeared:

Department of National Revenue:

R. C. Labarge, Deputy Minister;

A. R. Hind, Assistant Deputy Minister; and

H. D. MacDermid, Chief, Evaluation Section.

Department of Finance:

C. D. Arthur, Deputy Director, International Economic Relations Division.

Upon motion it was *Resolved* to recommend to the Senate the said White Paper and the amended bill as reported in the Journals of the House of Commons on December 9th, 1968. Should Bill C-146 differ materially from the amended draft bill, then consideration of such bill may be necessary by this Committee.

At 11.40 a.m. the Committee adjourned.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, December 18th, 1968.

The Standing Committee on Banking and Commerce to which was referred the "White Paper on Anti-Dumping", has in obedience to the order of reference of December 9th, 1968, examined same and reports as follows:

Your Committee has considered the White Paper on Anti-Dumping tabled in the Senate on December 9th, 1968, and in particular the draft bill contained at pages 40 to 100 thereof. Your Committee has also considered the amendments to such draft bill proposed by the Standing Committee on Finance, Trade and Economic Affairs of the House of Commons as reported in the Journals of that House on December 9th, 1968.

Your Committee recommends the draft bill, amended as so proposed, to the Senate for its favourable consideration.

If Bill C-146, "An Act respecting the imposition of anti-dumping duty", now in the House of Commons, reaches the Senate in a form materially different from the draft bill as amended by the Standing Committee on Finance, Trade and Economic Affairs of the House of Commons, then your Committee recommends that such Bill C-146 be referred to this Committee for consideration.

All which is respectfully submitted.

T. D'ARCY LEONARD,
Acting Chairman.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

Ottawa, Wednesday, December 18, 1968.

The Standing Committee on Banking and Commerce, to which was referred the White Paper on Anti-Dumping dated September, 1968, for examination and report, met this day at 10.00 a.m. to give further consideration to the White Paper.

Senator T. D'Arcy Leonard (*Acting Chairman*) in the Chair.

The Acting Chairman: Honourable senators, we are continuing our consideration of the reference to us by the Senate of the White Paper on Anti-Dumping. At our previous two meetings we have had evidence from Mr. Arthur of the Department of Finance. This morning we have Mr. R. C. Labarge, the Deputy Minister of National Revenue, Mr. A. R. Hind, the Assistant Deputy Minister, and Mr. H. D. MacDermid, Chief of the Valuation Section of the Department of National Revenue. I think Mr. Arthur may be coming later.

If it is agreeable to you, I suggest that we might ask Mr. Labarge if he has some preliminary statement to make to us about the White Paper and the draft bill so far as it concerns the Department of National Revenue, and then we can question him. Is that agreeable?

Hon. Senators: Agreed.

The Acting Chairman: Mr. Labarge, have you something you could give us by way of preliminary remarks?

Mr. R. C. Labarge, Deputy Minister, Department of National Revenue: Mr. Chairman, among the witnesses I had hoped to have Mr. M. T. Keam accompany me, but I understand he is busy helping the Departments of Finance and Justice in connection with things that are happening in the House of Commons.

Mr. Chairman, members of the Senate, I am pleased to know that a representative of

the Department of Finance has already appeared before you to give you some of the background of the proposed anti-dumping law now before you. He has undoubtedly explained its importance in relation to our domestic manufacturers, as well as to the countries with whom we trade and who trade with us. This proposed law and our recent tariff changes have joined Canada to the rest of the countries which now subscribe to the objectives and conform with commonly agreed upon rules governing our ever-growing multilateral trade.

I and my colleagues, Mr. Hind, Mr. MacDermid and Mr. Keam, naturally view these proposed changes in a more sensitive and personal way than most. After all, we have to administer these proposals from the moment they become law. We are, as it were, betwixt and between, having to see to the protection of our industries on the one side and not give offence or incite to retaliation those who seek to sell to and buy from us. However, we are not new to this task. Our department has administered anti-dumping laws since 1904. Mr. Hind, the Assistant Deputy Minister for Customs, brings a lifetime of specialization in the field, starting out as a values investigator in Europe. Mr. Keam and Mr. MacDermid have spent their working years since university in the same specialization. They are backed up by a staff of over 87 trained and experienced personnel. Fourteen of these are stationed throughout Europe, Asia and the United States. Behind them the balance remain poised to move to pressure points anywhere at any time.

This does not, however, permit us to be complacent in the face of the challenges this proposed law will present. However, it is not all uphill. There are new features and innovations in the proposed law which will be of considerable help to us as administrators. There are also new burdens and responsibilities, of course. For our Canadian Manufactur-

ers there will be a number of advantages. However, the objectives of the proposed legislation can be fully attained only by an intelligent and responsible co-ordination of our respective responsibilities and efforts.

In so far as we are concerned there will be a definition of "associated persons" which will help us in dealing with non-arms'-length transactions, as well as a provision to deal with compensatory arrangements which affect the values for duty.

Time limits, carefully spelled out, will enable us to push forward with our investigations and reduce or eliminate stalling or delays in our getting information. These time limits, backed by the authority to make provisional determinations, further strengthen our hand. Retroactive application of dumping duties to cumulative or massive dumping could also be applied with authority. This in itself is a further deterrent to dumping on a large scale.

Some of these new powers, if not all, are also to the advantage of Canadian industry. Over and above these is the protection to be given to an infant industry which heretofore has had to battle its way to the point where it had to supply 10 per cent of the domestic market before getting protection. Both established and new industries will be able to avail themselves of this additional protection by an extension of the definition of injury to include threat of injury or retardation. There are also provisions for appeal against the departmental decisions on values as in the past, as well as the right of appeal on questions of injury to the Injury Tribunal.

Another, although indirect benefit of the proposed law will be an understanding of the anti-dumping laws of the other signatories to the GATT code, a knowledge which will stem from the experience of our own legislation and procedures.

I have said that this proposed legislation will work best when all those concerned do their share to make it workable. We have geared ourselves to meet all reasonable expectations. However, fear of the unfamiliar could inhibit our efforts. I say this with a background of experience which has seen us run ourselves into the ground because of cries of "Wolf, Wolf!". It would be most helpful too if those who hope for, and expect the best of service from us carefully studied the criteria for a complaint of dumping—i.e., goods imported at dump prices and injury or threat

of injury. If these elements are not evident then the complaint is a false alarm. Naturally we will be on the alert, but it will help no one if we scatter our forces and thus deprive someone who really has need for a quick response and maintenance of his right.

Mr. Chairman, in concluding these remarks may I say that we are most conscious of the new responsibilities that are proposed for us. It is not without pride and a strong sense of commitment that we say that we intend, not only to maintain our good reputation, but to enhance it. And now my colleagues and I would be glad to answer any questions that members of your committee would like to put to us.

The Acting Chairman: Thank you very much Mr. Labarge. I think there may be one or two members of the committee that were not at our other meetings and therefore I should explain again that what we are dealing with today is the White Paper and a draft bill set out in that paper, both of which have been considered by the Finance, Trade and Economic Affairs Committee of the House of Commons. That committee has made a report which is available to us and as a result a bill was introduced last evening in the House of Commons. I understand that some arrangement has been made for speeding the action on that bill in the house by reason of the study that has already been made by the committee.

We, in our turn, have been doing this preliminary work also in anticipation of the actual bill itself, so that at the present time we do not have the bill that has been introduced in the House of Commons which will reach us in due course. In the meantime we have the White Paper, a draft bill and certain amendments to it recommended by the House of Commons. That is the position we are at today. We could, for example, complete our work even prior to the bill reaching us or we can wait until the bill itself reaches the Senate and finish our work at that time. With these preliminary remarks I would now suggest that any questions that you would wish to direct to Mr. Labarge, you are open to do so.

Senator Carter: In the previous studies made we went over this draft bill pretty thoroughly and I think the one thing that stands out is that in Part II the deputy minister becomes really a czar of anti-dumping. I am a little adverse to any kind of czar and

I am just wondering if Mr. Labarge had any comments to make on that.

Mr. Labarge: Certainly. Let me tell you that I do not ever wish to be a czar.

The Acting Chairman: I can assure you that his reputation in the past has shown that he has not been one.

Mr. Labarge: As to the task of the deputy minister, we start out with someone bringing us a complaint. Obviously, he will be satisfied if I take it and put it through the procedure. He may not be satisfied if I say I see no evidence of dumping and that he lacks one of the important criteria. I may say I see no evidence of injury.

In this case, he would be in the same position as all complainants with the department over the years. Naturally, I would ask such a person if he could get something to substantiate his complaint further. He may be a member of an association geared to assist him, or he may have recourse to other people in business and he could ask them for anything which may be helpful.

I do not think it is good enough for him simply to go to some of his salesmen—who may have been unsuccessful in pushing his goods. Many complaints originate in this way, where a businessman calls up his salesman and asks why there are no orders coming in and the salesman says he is being undersold, that there is dumping; then it is reported that “there is dumping”, but it is just the salesman who has not been able to compete with the local people or compete with a fair importation.

I would pursue this matter until the man said he had got no more evidence. In the past, it could be said that that would end the matter. However, we have gone further. Although it would seem reasonable to end it there.

Something over 60 per cent of our investigations in the past have resulted in no evidence of dumping, even where there have been cases, which, in the minds of the complainants, have had justifiable evidence. I do not want to give you examples, there are perhaps too many of them. This 60 per cent, as I indicated, caused us to send people in to foreign countries to the exporters, to go through their books, and end up with the situation being a straightforward, honest to goodness sale at proper prices. Therefore, we

have no intention of dealing with these complaints on any basis other than that of seeking the fullest information that a man can give.

If he is unable to obtain such information, because the importations were not made by himself, he can of course make an importation himself. This may give him more information; but, over and above that, it gives him a right of appeal to the Tariff Board. In that case the question of fact arises, and we must appear before the Tariff Board to indicate why, in our opinion, there is no dumping. We have a lot of information which is available to these people, too, in the trade journals and other publications which list values of goods in that country. They are advertised nationally and internationally. On the basis of these going prices we may feel that there is no case. We would produce that evidence, but it may be that they would produce more, even if it meant we had to go in and make an investigation, just to confirm.

The history of this indicates that the power to ignore is not used—and it would be a miserable life, not to pay serious attention to people who believe they have a case.

As to someone who has not proven either dumping or injury, he has an appeal on the injury aspect of it to the injury tribunal. If it goes to the injury tribunal and that tribunal says there is no injury, then we are going to follow through on the dumping, to make sure that the other element is there. But we would not have told the complainant that he has no valid complaint—unless the two criteria were really missing.

Senator Carter: When he presents his first evidence—he has to present some evidence to the deputy minister because it is the deputy minister who initiates the investigation and the deputy minister may not have sufficient evidence to warrant that—does not that evidence include both evidence of dumping or underselling, and evidence of injury as well?

Mr. Labarge: It should.

Senator Carter: The deputy minister would act on either type of evidence?

Mr. Labarge: He is supposed to act if the two elements are there. If he is not satisfied that the injury aspect is there he can tell the complainant that the injury evidence is not good, or he can say that the injury evidence is sufficient to have the matter referred to the injury tribunal.

I could first ask the complainant if he has more evidence. We must remember that we are talking about an industry, not about a company. That is why these industrial associations are important. They take a broad look at the industry. The association may tell the complainant "We know how you feel about this but, frankly, in terms of the whole industry, it is just a straw in the wind."

Senator Carter: I think the objection to the Tariff Board is that it takes so long that the man could be out of business before they would get around to considering his case.

Mr. Labarge: They may have, at times, because of various assignments they have had, such as the references. They are pretty speedy now. At times, we have had a difficult time getting cases ready, because they were so speedy.

Senator Connolly (Ottawa West): You are the people that held it up.

The Chairman: I would like to ask a question, to clear my own mind. With respect to the case where you come to a conclusion that the complainant has not proved dumping, that complainant cannot get then to the tribunal—according to the draft bill, as I read it—is that right?

If he has not satisfied you as deputy minister that the evidence constitutes dumping—leaving aside the question of injury—and that you are not satisfied that there has actually been dumping, then he no longer, unless he is an importer himself, which he would not be, he no longer has any further recourse.

Mr. Labarge: Except, as I say, to the Tariff Board, if he feels that his lack of information is due to his not having enough knowledge about the importation—by making an importation himself.

The Chairman: This is the recourse.

Senator Molson: I wondered how often it had happened, Mr. Chairman, that somebody had made an importation himself. It would be like suggesting that Dominion Textile go and buy a piece of material from a textile manufacturer in the States, or something of that sort.

Mr. Labarge: There would be comparatively few cases, I would say. With our 60 per cent over, this could indicate that in going after these we took care of a large portion of

them. On the other hand, a man may say, "Well, look, it is up to me to get this information and apparently I don't have enough." He could make these additional efforts. The last thing he might resort to would be the importation.

Senator Connolly (Ottawa West): Suppose he made the second importation—of course, it would be his first, actually.

Mr. Labarge: Yes.

Senator Connolly (Ottawa West): And suppose he failed. Then he would be subject to all of the penalties of the dump duty, would he not?

Mr. Labarge: This makes it less attractive, of course.

Senator Connolly (Ottawa West): There is a risk involved.

Mr. Labarge: It would be an unusual thing for a man to say, "I am coming to you so that you can apply the dump to me."

Senator Connolly (Ottawa West): I want to break the law so I can get more."

Mr. Labarge: He does not have to import in very large quantities, though.

Senator Connolly (Ottawa West): I suppose that is so. That would help him.

Mr. Labarge: It depends on how much is at stake.

The Acting Chairman: He does not break the law. He simply comes in and says that these are the facts. He does not really break the law, does he?

Mr. Labarge: No. There is no penalty in this, because really what he is committing himself to is doing what he expects the others to be committed to ultimately, and that is to pay the duty on the fair market value. There is, of course, the dump value which may be applied to him.

Senator Connolly (Ottawa West): I am sorry to ask this question, but what is the dump? It is the difference between the duty on the fair market value and the duty that he claims plus a penalty of a certain per cent, is it not?

The Acting Chairman: There has been a change. This draft of the bill proposes a change from the previous duty or penalty and Mr. Labarge could explain that.

Mr. Labarge: Yes.

Senator Connolly (Ottawa West): I am sorry that I was not here for that part, but last week when we had Mr. Arthur here he was talking about a reference to an existing section in the Customs Act where the dump provisions were still applicable.

Mr. Labarge: In the law as it now stands it is the difference between the fair market value and the selling price. A change is coming about that it is important for industry to take note of, and that is that the dump now will be the difference between the normal value as it is defined—not the fair market value—and the exporters' price. The fair market value will still be the figure for ordinary duty purposes, but the normal value is the one which we start off with for dump purposes under this proposed law, and it will be the difference between that and the exporters' price or the purchasers', whichever is the lesser.

The normal value in this case takes into consideration allowances which were not granted or conceded under our present law. In other words, if you have a difference in trade level—say, that he sells to distributors in his country and sells to wholesalers in ours, or the other way around—then there is allowance made for it.

Senator Connolly (Ottawa West): In his favour?

Mr. Labarge: Yes. Also allowance is made with respect to the discounts that prevail in the market, which can be extended according to the purchases made by the Canadian importer. So that in effect we will have a lower price than the fair market value to start with for dump purposes in some cases. It is not necessarily applicable all throughout.

Senator Connolly (Ottawa West): You say a lower price. The importers' or the buyers' price here?

Mr. Labarge: The normal value. I will give you an example using just rough figures. Take the figure of \$100 for the fair market value, \$90 for the exporters' price to Canada. That is under the old law. Now, the difference there is \$10. So the penalty would be the \$10. Now we forget the fair market value and we come to the normal value. Supposing we put this normal value at \$90 or \$100. Put it at \$100, since that is the starting point. Now we find that there is an allowance of 10 per cent

because of the difference in trade level. So it becomes a difference between \$80 and \$90. So that \$80 is lower than it would have been in the other case and there may be other discounts and allowances.

Senator Hays: Mr. Labarge, could you give us some glaring examples of dumping under the old provisions of legislation and under the new act, and could you follow these through showing how you would deal with them, the time factor, what happens when there is injury, and that sort of thing? Can you give us one or two examples?

Mr. Labarge: If you do not mind, I will pass this on to the people who work out all these details before they get to me in the final issue. Mr. Hind, would you be able to do this, please?

Mr. A. R. Hind, Assistant Deputy Minister for Customs, Department of National Revenue: We have had a number of instances in the past, Mr. Chairman, where we have found dumping. I am not breaching any confidence because this has appeared in the press, but we found dumping of TV receivers from Japan. Under our current law we must look at the value at which the TV receivers are actually being sold in Japan for home consumption. Doing so has enabled us to come up with what Mr. Labarge has properly called the fair market value. These are the terms used in the Customs Act.

Senator Hays: Is it privileged information or can you use some figures?

Mr. Hind: I will use just hypothetical figures, if that is all right. These are not actual figures. We found, for example, that the fair market value in Japan was \$100 for a set. We found that the price to Canada was \$90. Under our current law we can collect the difference as dumping duty, namely \$10. There were two factors involved in this particular case which we were not allowed to recognize under the current law, but which we will be able to recognize under the new law. Mr. Labarge has touched upon this as well. In other words, the best class of trade we could find in Japan was wholesalers; in other words, the manufacturers in Japan sold to wholesalers who in turn sold to dealers and the dealers sold to the consumer. The Canadian importer was not a wholesaler; he was a distributor, a man who buys for all of Canada and who sells in Canada to wholesalers.

Now, in normal business practice this would justify a lower price to that distributor, but the current law, as I said before, does not permit us to make that allowance for that superior class of trade. The new law, however, will permit us to recognize the fact that sales are made to a superior class of trade in Canada to that found in the home market. In the new law we will start with the actual selling price in Japan to wholesalers which would be, say, \$100. Then we would have to apply some discount that would seem to be reasonable because of the superior trade status of the Canadian importer. For example, in selling to the Canadian importer, the Japanese manufacturer is saved certain expenses such as salesmen's salaries, warehousing expenses, bad debts and so on. The new law would permit the deputy minister to take into account the savings and come up with a discount that may be recognized in determining what is to be termed the normal value. So, as I said, we start with \$100, and it may well be that we find that because of the services of this Canadian importer there is a saving of 5 per cent. Therefore, whereas the fair market value is \$100, the normal value would be \$100 less 5, which is \$95. Now if the selling price in Canada continues to be \$90, then the margin of dumping under the new law would only be 5, rather than 10 under the existing law.

Senator Hays: The consumer would be paying \$100 for the TV, exactly the same as the consumer would be paying in Japan.

Mr. Hind: No, this \$100 figure is the price at which the Japanese manufacturer sells to the wholesaler; and then the wholesaler would sell to a dealer, and the dealer would sell to a consumer and one would expect the \$100 figure to increase with each handling.

Senator Hays: So it would be \$100 plus something.

Mr. Hind: Yes.

Senator Hays: My next question deals with agricultural products, and the two-price system. Let us take as an example canned pork in Denmark where they have this two-price system and yet they have a great surplus of pork. How under the existing legislation would this be handled, and how was it handled under the old legislation?

Mr. Hind: Mr. Chairman, I am not familiar with this two-price system of selling canned

pork in Denmark. Might I be permitted to ask my colleague?

The Acting Chairman: Senator Hays could probably explain it as well as anybody.

Mr. Hind: I just wonder whether Senator Hays has in mind when he speaks of the two-price system, one price for selling in the home market and another price for export. If that is the case, the law remains unchanged. In other words prices for export in a general way are just not considered under the existing law or under the contemplated law. The present law and the new law are based on what happens in the home market to goods sold for home consumption, and we start from this point.

Senator Hays: There would quite likely be a complete prohibition against an import if there was a big variation in price between what the consumer at home would pay and what the consumer in Canada would pay.

Mr. Hind: If the price in the market in Denmark was sufficiently high that the goods could not be landed in Canada and could not sell, it would be the same as a prohibition.

Senator Hays: Also in arriving at the price at which it must be sold in Canada as compared to the price in the home market, the transportation must be taken into consideration.

Mr. Hind: No, sir, transportation doesn't form part of the price for duty purposes. Both normal value and fair market value are based on the price at the point of direct shipment to Canada which in the present case would be the packing plant, I suppose, in Denmark. In other words we don't take into account as part of the computation the cost of moving the goods from Denmark to Canada. Indeed we don't take into account the duty payable in Canada or other handling or brokerage costs, etc.

Senator Hays: You consider it on a C.I.F. basis?

Mr. Hind: No, we work on the basis of an F.O.B. price at the point of direct shipment to Canada ex works.

Senator Hays: Would you give me an example of countervailing duties? In the White Paper you say:

The term "countervailing duty" shall be understood to mean a special duty levied for the purpose of offsetting any

bounty or subsidy bestowed, directly or indirectly, upon the manufacture, production or export of any merchandise.

I am not quite sure of the interpretation of "countervailing duties" and I would like an example.

Mr. Hind: Mr. Chairman, countervailing duties are something quite apart from anti-dumping duty. It is included in the Customs Tariff at the present time as section 6 (a). Anti-dumping duty applies when goods are sold to Canada below the price at which they are sold in the home market. Countervailing duties, on the other hand, are special duties that are levied when a foreign government subsidizes in one fashion or another the production and sale of goods. To my recollection Canada has never had to resort to the application of countervailing duties even though this has been in the law now for some few years.

Senator Hays: Is that not a form of two-pricing system as well?

Mr. Hind: It could be.

Senator Hays: Take for example the question of butter in our own country where we subsidize the price of butter to the consumer and yet we want to sell butter. Would that come into this category?

Mr. Hind: It could in appropriate circumstances, yes.

Senator McDonald: Mr. Chairman, I want to come back to the television set that Senator Hays was asking about. You said that the price of the Japanese manufacturer being \$100, then in the case of Japan it would go to a distributor and to a retailer so that in the end a Japanese consumer would pay \$100 plus \$25. Then, in coming into Canada, you said the import price would be \$95 and it would be \$5 dumping, so that the importer's price would be \$100 in Canada. But again this would go through the distributor and the retailer and the price to the consumer in Canada would be \$125, for argument's sake, the same as the price to the consumer in Japan. Is that right?

Mr. Hind: Although the law does not permit us to go beyond the actual importation of goods—in other words, the price at which the goods are resold in Canada is beyond approach from the Department of National Revenue—this is not part and parcel, in a

general way, of the existing or the proposed law.

Senator McDonald: But would you expect that would be the end result?

Mr. Hind: Yes, I would.

Senator Molson: Mr. Chairman, I would like to come back to Senator Carter's question, which I think was the first of the morning. I do not think, unless there is some other evidence, that the answer there is the right of appeal of any Canadian manufacturer against a ruling that there is no dumping is really a very good one. I do not know we are particularly concerned with that. I think we know that the operation of the department has been an extremely benevolent one, but if we are dealing principally with the matter of the discretionary powers, then certainly they are in the hands of the deputy minister in so far as the establishment of whether or not there is dumping is concerned.

Unless there is some other information we could get, I am not really too impressed by the idea the Canadian manufacturer can rush out and ask the man he wants to get dumping pinned on to sell him goods so he can take a case to the Tariff Board. I do not think this is practical, that it can work, unless the departmental officials can tell us it is. I doubt it very much.

Mr. Labarge: I do not think it is, and I think I have tried to indicate, senator, that it is because of this that we are particularly cautious in saying to a person, "There is nothing here to go on." But, believe me, as I have told you, we have wasted an awful lot of time, I think, at the expense of other people who stood in line with a higher priority. We were chasing around all over the place, to come back with what we suspected from the outset, that there was no information because he did not have any and there was not any in existence to be useful.

The other side is to figure out what kind of appeal you can propose, and this is where your headaches really begin, because the only answer is to run after everything and to go on wild "witch hunts". Do not imagine these investigations are not pestiferous and do not aggravate the foreign traders and their governments. It is not for nothing we must advise the officials of the governments of these matters, and the time that ensues and the resentment that follows our carrying out this useless exercise at the expense of their

appeal, it really gets under their skin and they would be fully justified in taking the same attitude towards us, and we would arrive at this sort of situation, "You throw one, and I will throw one."

Create whatever kind of appeal you like for this fellow, this is the case—and I believe you are a lawyer—

The Acting Chairman: No, Senator Molson is not.

Senator Molson: I am very flattered.

Senator Connolly (Ottawa West): The answer to that is: Yes, after the Rules Committee, he is one.

Mr. Labarge: But in any case, a client coming to a lawyer asks him whether he is going to take his case or not. It depends on whether or not there is anything to his case.

Senator Molson: Would he not be better to go to a chartered accountant?

Senator Connolly (Ottawa West): Boo! Boo!

Mr. Labarge: All right. But taking a man in this position, where we have given him every possibility to get all the information that he has and he still has nothing, how do you expect him to produce more before any other body? I know what one answer is: "He does not have to produce it; you have to produce it." Is this right? Is this what the form of appeal is, because there is no discretion and nothing but credit goods?

Senator Cook: From a practical point of view, every time a case of dumping is established, the department does collect more revenue, does it not?

Mr. Labarge: Yes, but there must be a breaking point, economically, in this. There are lots of ways they could tell us to collect money, but for every dollar we collected we would spend \$10, so I do not think it is the kind of legislation I would like by way of revenue collection.

Senator Molson: I think Mr. Labarge's answer is very constructive. This is one of the things we want to make clear. I do not think we are criticizing the way in which the department has operated, or in anticipation of the way it will operate, but I think there is that principle here, that the matter should be well aired.

I think Mr. Labarge has made the point, one I believe is really valid, "All right, what

kind of appeal do you want? What kind would solve this problem?" I think that is a very good point, because I do not think there is an easy answer to it.

The Acting Chairman: The only one is the one we already have, that he will have to make the import and try to prove his case that way.

Senator Connolly (Ottawa West): Mr. Chairman, if I could come back to Senator Molson's point, but on another aspect, when you talk about the Tribunal which is to be set up under the new legislation, you refer to the fact that the only basis for appeal to it is damage to the Canadian industry by imports at a level you think is a depressed one.

Just putting aside for a moment the matter of a second importation to establish what the fair market value in the country of origin is, this he has to do if he is to get to the Tariff Board, because he has not the evidence himself at that stage, someone else has done the importing, and the Tariff Board, I rather thought we concluded the other day, was, first of all, overworked and, in any event, the process of appeal is slow and expensive—and it was particularly the expense side we were concerned with. Would there be, first of all, any less expense to allow a man to appeal to the tribunal on a question of whether or not there was damage; and would it not be a faster procedure if that were allowable?

Mr. Labarge: I am dealing with the case of a person presenting a complaint in respect of which we say: "There is not enough evidence here to support dumping", but we decide, however, that there is enough evidence of injury to warrant our doing something about the injury. I am dealing with that portion of the criteria. We would refer that, or he could himself refer it, to the injury board. Now, once the injury board has the matter to deal with it can then find there is either injury or no injury. If it finds there is injury then it can send the matter to me, and I can say: "Go ahead on the dumping."

Senator Connolly (Ottawa West): In effect, when the injury board, as you call it—and I think that that is a good description—finds that there is injury then that is tantamount to their saying: "We think there is dumping."

Mr. Labarge: It is saying: "There is more than smoke here."

Senator Connolly (Ottawa West): Yes.

Mr. Labarge: This is, in a sense, a form of appeal that he has.

The Acting Chairman: But, Mr. Labarge, he cannot get there. He cannot proceed on the question of injury at all.

Mr. Labarge: I am saying that either he can or I can.

The Acting Chairman: But you must first find that there is dumping.

Senator Cook: No dumping, no case.

The Acting Chairman: Yes, no dumping, no tribunal. It is this word "only" that concerns us.

Mr. Labarge: There is one kind of case that I am thinking of, and I should like to talk to my colleagues for a moment.

Senator Molson: What about section 13?

The Acting Chairman: Yes, section 13(3). The use of the word "only" was, in the view expressed to us by Mr. Arthur, and in our own view from reading the section, indicating indicative of the fact that the tribunal did not enter into the matter unless there had been a finding by you of dumping. Before the tribunal can deal with the matter there has to be a finding of dumping by you. This is the point that has been causing us some difficulty.

Mr. Labarge: Yes, dumping is something on which I must commit myself, and really this is where I am of the opinion there is no evidence of injury.

The Acting Chairman: That is right, this is the whole question, and the answer you gave before was that in 60 per cent of the cases you find no foundation for the allegation of dumping at all, and if all of those cases were to be opened up by there being some possibility of going to an appeal tribunal, be it the Tariff Board or this tribunal, then the duplication that would presumably take place in investigation and so forth might mean a tremendous amount of work.

Mr. Labarge: Yes, and cost. Might I ask if Senator Connolly would comment on the matter of costs before the Tariff Board? There was a time when this was a court of easy access, and a court of very limited cost to the appellant. I am not sure that there is even a fee required to appear before the Tariff Board, and if there is one I doubt that it exceeds \$10. So, what we are talking about is

someone who is coming forward with a battery of expensive lawyers, and so on.

Senator Connolly (Ottawa West): That is where the expense comes in, because these people have to be brought to Ottawa. The Tariff Board does not move around. This can be a very expensive proposition.

Mr. Labarge: Yes, and I am suggesting that in the kinds of cases we are talking about it can be very expensive. If a man has no case; if he has no evidence to provide the people who are going to appear on his behalf, then he may have to send them, or even go himself, to Europe in order to find out what the prices are, and so forth, only to find out that he has no case. On the basis of experience with the kind of people we are talking about, I will say that at the most all they have is a suspicion. If he has any kind of evidence at all upon which we can build then it is a different matter, but if he is without the pertinent information and all the rest of it then where is he going to exercise his right of appeal effectively?

Senator Connolly (Ottawa West): That is true, except that he would not be asking for an appeal, or wanting a further investigation, unless he is confronted with a situation in which these goods which have been brought in from abroad are actually underselling his goods.

Mr. Labarge: But, there are so many cases in which people can enter our market on the grounds of greater efficiency. You just have to read the reports that have been made on some of the—

Senator Connolly (Ottawa West): I have discussed situations like that with your officials, and it was proved that the efficiency or the productivity in the country of origin was so great that certainly there was no evidence of dumping.

Mr. Labarge: And not only that, but there are industries in Canada which have been criticized for the high cost of their operations, and which they are able to continue because of lack of competition from more efficient producers. You have to think of the consumer as well in this light.

Senator Connolly (Ottawa West): Of course, we are concerned only with this small point of enlarging the jurisdiction of the injury board to enable such a man to go before it in the same manner as a taxpayer may now go

very informally before the Tax Appeal Board and plead his case, and sometimes plead it personally without the assistance of a lawyer. Let me put it this way: Would you comment on whether or not it would be of benefit to Canadian businessmen for them to be able to go to the injury tribunal, as it has been described, to discuss not only the question of injury but also the question of whether in fact there is dumping?

Mr. Labarge: Well, they have the alternative of building up a complete staff to go and investigate dumping, or referring it to us, so we are back to where we started. They are not geared for that. They are not going to pass any opinion on dumping; it is injury that they are concerned with.

Senator Connolly (Ottawa West): But they will have investigated dumping in order to conclude injury.

Mr. Labarge: No, no.

The Acting Chairman: The point Mr. Labarge is making is that in order to determine dumping evidence from other countries throughout the world will be needed, for which the Department of National Revenue is equipped with a staff, and when it comes to a tribunal which is set up to try to deal with the same matter, either it has to accept the evidence put before it by the Department of National Revenue or have some kind of organization.

Senator Connolly (Ottawa West): Of dumping.

Mr. Labarge: Yes.

Senator Connolly (Ottawa West): Perhaps I am very obtuse about this, and maybe the obtuseness is in my own mind. The injury tribunal will proceed after the deputy minister has found evidence of dumping. Under this proposed law, will the deputy minister of the department be required to give evidence before the injury tribunal of why he found dumping?

Mr. Labarge: No.

The Acting Chairman: That is assumed. The tribunal cannot deal with the matter unless there has been a finding of dumping.

Mr. Labarge: Anyway, my finding of dumping is subject to appeal.

Senator Connolly (Ottawa West): To the Tariff Board?

Mr. Labarge: Yes.

The Acting Chairman: That is right.

Mr. Labarge: There is quite a difference between that and the income tax case you talk about, because a man goes there talking about his own affairs, his own transactions.

Senator Connolly (Ottawa West): That is right.

Mr. Labarge: Whereas in the other case we are talking about who somebody, some time, at how much, may be.

The Acting Chairman: Are there other questions?

Senator Hays: To go back to the TV case, when they approach you what is the actual procedure? How is this done?

Mr. Labarge: In the TV case it was first one complainant.

Senator Hays: We sent you a written complaint?

Mr. Labarge: A written complaint.

Senator Hays: To the deputy Minister or to the Tariff Board?

Mr. Labarge: It was addressed to the deputy minister, containing considerable information, with a request for an appointment to discuss. We discussed this fully and said, "Obviously you have given us enough to warrant an investigation", so we proceeded with the investigation and found the situation where, as we say, the price over there should be higher because it is sold to wholesalers. What was happening was that the Japanese suppliers naturally, being businessmen and thinking as ordinary businessmen, said, "The man we are selling to in Canada is undertaking a great deal more by way of selling these, distributing them, et cetera, than is the wholesaler. Therefore he should be entitled to a price which compensates him for these extra costs."

Senator Flynn: In other words, the suppliers is making practically the same profit.

Mr. Labarge: Yes.

The Acting Chairman: If that were the whole case your finding would be that there was no dumping.

Mr. Labarge: Under our law as it has been we have said, "You cannot do that here,

because at home you only sell to wholesalers, so you have got to use your wholesale price." They said, "Are you guys crazy? What kind of business sense does this make?" This is one of the reasons why our law has been so criticized, apart from other reasons, and that is why I say that when we now have this new term "normal value" it permits an allowance for this kind of thing.

Senator Hays: So this is a great improvement over our old system?

Mr. Labarge: If you look at it in terms of reasonable business.

Senator Hays: How long did it take you to deal with that case from the time you received the first complaint?

Mr. Labarge: It took us a while, not because we were not working on it but because we had to receive delegations—Government representatives, trade representatives from Japan, the Canadian man who was affected by it. Again it shows that we do not bull our way through these things. I think six Japanese came to our office, and we investigated 18 manufacturers.

Senator Hays: How much injury was done to our people before there was a decision?

Mr. Labarge: There was no question of injury, because we do not look into that. We look into it simply, as the law says, to see whether there is a dump or not regardless of whether there is injury.

Senator Hays: How long did it take you? A week, a month, two months?

Mr. Labarge: This would take a few months.

Senator Hays: It took a few months?

Mr. Labarge: Oh, yes.

Senator Hays: In the meantime the importations were still permitted and there was still injury being done.

Senator Connolly (Ottawa West): Still dumping being done.

Mr. Labarge: We were not certain enough of our facts. We had to await the results of the investigation.

Senator Hays: But in the meantime there was dumping?

Mr. Labarge: Yes, if you want to put it that way.

Senator Flynn: If the finding is conclusive the duty has to be paid.

Mr. Labarge: But not retroactively. This is one of the new things.

Senator Flynn: This is retroactive?

Mr. Labarge: We can put in a provisional determination. When we can say we are satisfied there is a good chance that it is dumping we put in the provisional dumping and they pay the dump. If in the end we find there is no dumping it would be reimbursed. We do not have to apply it if it is this way or that way provisionally, but they are committed to pay if we find dumping, retroactive to the time of the preliminary determination.

Senator Hays: To take an example, this act has nothing to do with sour cherries from Michigan coming into Canada.

Mr. Labarge: If there is undervaluation, yes.

Senator Hays: They come in in a hell of a hurry because the sour cherry season is over in two weeks. How do you handle this? When they are ready to pick you have to pick them.

Mr. Labarge: It is extraordinary how many people stand watching first the blossoms and then the cherries. We usually get some warning, and then crop notices are published.

Senator Hays: You use the value for duty in these cases and it can be done in a hurry?

Mr. Labarge: Yes.

Senator Everett: When the importer is not a distributor or wholesaler but is a large retailer, or a number of retailers, what do you use as the fair market value?

Mr. Labarge: The equal level, the normal value from retailers in the country of export.

Senator Everett: Then that would likely be higher than, say, the wholesaler's value?

Mr. Labarge: Yes, and higher than the distributor's again.

Senator Everett: Would that not force a retailer like Eaton's, who would normally buy direct from the manufacturer, perhaps on the same basis as the distributor, to go through a wholesaler or distributor? I wonder whether under the new act consideration would be given to their buying power in the domestic market. They would be accorded at least the wholesaler's price, and often the distributor's

price. In the domestic market they would be accorded at least wholesale prices if not distributor prices.

Mr. Labarge: I misunderstood. You normally find the same condition existing in the country in which this happens. There are manufacturers who sell directly to the large buyers and if they are getting discounts on large buying, large purchases which are sufficient for them to make their profit on, that is up to them. They do not seem to have suffered under it, but certainly we would look at the level at which these same goods are sold by manufacturers, the same manufacturers here and we would find that they are selling to chain stores in large quantities.

Senator Everett: I can suppose a situation in which a manufacturer in a foreign country had a structure for the distribution of its goods composed of a distributor, a wholesaler and a dealer and in that country it would, by the very nature of the structure that it had put together, be forced to go on the different price levels through those various stages of distribution, but it might be that in exporting its goods it found it as advantageous to go directly to a giant retailer or one or two retailers and would enjoy as much distribution as it would if it set up this massive—

Mr. Labarge: This is one of the reasons for the new law.

Senator Everett: Would the new law take that into account?

The Acting Chairman: The definition of normal value in section 9 seems to make allowances for all of these kinds of factors that may influence price between one country and another country.

Senator Everett: Would it be true to say that under the old law that would not be taken into account and under the new law the deputy minister would take that into account?

The Acting Chairman: Are there any other questions?

Senator Hays: I would like to get back to examples again, Mr. Labarge. Under the provisions of the new act, besides the 10 per cent which we speak of and which existed under the old act, which is a definite improvement...

Mr. Labarge: Made in Canada?

Senator Hays: Yes. What other advantages do you see over the old provisions we had to deal with.

Mr. Labarge: I think I touched upon those in my opening remarks as much as I could. For instance, with this 10 per cent not being a factor any more, you can have a new infant industry protected against injury. This has always been a sore point because fellows come in to me and ask when we start to protect the "baby"—when it is a baby or when it grows up and takes care of itself. That is the way this law has been operating. Then you have the protection against threat of injury.

Senator Hays: Which we did not have before.

Mr. Labarge: We did not have it before; it had to be a proven thing.

Senator Hays: And infant industries.

Mr. Labarge: Infant if they are injured or retarded.

Senator Hays: Which we did not have before and the 10 per cent.

Mr. Labarge: Yes, the 10 per cent goes out.

Senator Hays: And threat of injury. These are the main points.

Mr. Labarge: Yes.

Senator Hays: Under the old existing legislation you had to come to the deputy minister in any event. This really has not changed.

Mr. Labarge: No.

Senator Connolly (Ottawa West): This is supplementary, Mr. Chairman, just following Senator Hays question—is this really in effect protection for the Canadian industry in certain respects?

Mr. Labarge: In certain respects. You have a counter-balancing here in this. There are other things such as we have mentioned, the definition of "normal value" for instance. I think this is something which makes it impossible for people to sell to Canada from abroad on terms which suit the levels of trade at which they sell here and are not restricted by conditions which prevail in their own country because of their geographical compactness or whatever you like. For instance, in a small country like Japan or Great Britain why create all these levels when you are only a step

away in either direction from where you are manufacturing to either the wholesaler or the retailer?

These people say "this is imposed upon us and meanwhile what are we competing against?" You see we are competing against other countries and particularly the United States. The United States sits all along the border and it could put distribution and service agencies all along there, whereas if we want to give quick service we have to put that on our side of the line, and at what cost? We do not have to do that in our country, because we just supply it.

Senator Connolly (Ottawa West): Therefore we make an allowance to you on price so you can do this.

Mr. Labarge: Yes.

Senator Connolly (Ottawa West): I would like to get back to Senator Hays' illustration about the T.V. sets. What will be the impact of this legislation now on the electrical appliance industry in Canada? My recollection is that this is an overprotected industry, the duties, surcharges and taxes and when you add them all up it is over 50 per cent.

I put a question on the Order Paper some time ago and got the details, and I think 50 per cent is an exorbitant protection for an industry. Will this enable foreign imports to compete more freely with this industry or will it make the local industry more efficient or will it have the effect of bringing down prices in the local industry? How will it affect this tremendous protection the electrical appliance industry enjoys in Canada?

Mr. Labarge: I would only be guessing if I gave you an answer to this. Perhaps if I read their brief backwards I might see what they were concerned about. This might give me some indication of what they are worried about. Obviously it is an industry which has always sought protection against dumping, because they have been dealing in some very major items. These call for a great deal of complex engineering for what is a limited market and we have a market here in Canada which justifies their engineering skills to a certain extent, sufficient for them to go into it, but I would say that the competition from abroad has been very severe in some of these major items. I would also say that some of it has apparently been dumping. If that went on you could see that they would feel that they are going to lose all these highly skilled peo-

ple and would not be able to develop with the country in the area of transformers, etc.

We also have an excellent case. Without being too specific I will indicate to you a case of a manufacturer of electrical cables. You ask what kind of evidence constitutes an indication of injury. For some months past, foreseeing this, when people came to us with a complaint on dumping, that was all they had to prove. We asked them to wait for a while, so that we might see what kind of thinking was in this presentation and what the element of injury might be.

First of all, on the dumping question, they were really clear. They did not have all the facts concerning the prices of goods sold in Canada, but they did know the price at which apparently they were selling them to exporters and at which they were being offered to exporters. They figured out the cost of the materials in Canada. There is very little difference in the material, because these exporting countries do not have the materials and probably have to buy the raw metals and so on from Canada.

They arrive at these figures and point out that it is not possible to take the ingredients alone and come out with so low a price, when all the production costs, profits, and so on are added.

Senator Connolly (Ottawa West): And royalties.

Mr. Labarge: Yes. Then we looked into the question of injury. And they showed that two per cent of their market had been lost in one year. I think it had gone up to three per cent the following year and it was up now to five per cent. I remarked that I was not sitting on the injury tribunal, but I question whether a five per cent loss of the market would constitute an injury to that industry. I add that if the injury tribunal were to examine this, they would see the increase in these importations—and I ask at what point the complainant would say this would constitute an injury to the whole industry. I ask them: "Are you just saying, 'step in now, because if you do not step in now, it will be worse'?" But is "worse" injury, and at what stage is it?

We would consider that exercise to show how these people are prepared, by the statistical analysis, to deal with these cases.

As to your general question, I do not think I could hazard. I think it is sensitive in many areas.

Senator Carier: It seems to me that any industry which requires 50 or 60 per cent protection cannot be very efficient.

Senator Hays: The textile industry?

Senator Carier: Electrical goods, radios, appliances, television.

Senator Hays: Are these negotiations not done, in so far as the tariffs are concerned, for the protection of all these electrical industries?

Mr. Labarge: The rates are but many of these have a sales tax, an excise tax, a duty in them. That is not protection, that goes for both the imports and the domestic.

Senator Carier: If it is protection, you cannot import it without paying 50 per cent more for it than you do in the country where you bought it.

Mr. Labarge: If that 50 per cent is made up of domestic taxes, that has to be for both.

Senator Cook: Do I understand that, as a result of the anti-dumping code, our exports will get the same protection in other countries as we are giving the importers here?

Mr. Labarge: It is the same basic code that they have agreed to.

Senator Cook: You might say that the anti-dumping legislation will be more or less uniform?

Mr. Labarge: There will be differences in the procedure, as to whether it is done by legislation in the form of an act, or by regulations; but it is clear that the terms generally are the same. Mr. Gray has made an excellent presentation on that.

Senator Cook: Would Canada have the right to complain if we felt the anti-dumping legislation was not within the spirit of the code?

Mr. Labarge: That is right. It is the same as they have been complaining about us. That was one of the troubles with the Japanese. One must understand how other people feel about it. They had the code in effect in July. We had not. We had our law. They said that we could at least inject the spirit of the agreement into the law. That is why we were in an extremely delicate position, because we really could not bring these things to bear, but we had to be reasonable. We spent a lot

of time explaining to them why our law insisted on this.

Senator Connolly (Ottawa West): Therefore, it is important to get this legislation through?

Mr. Labarge: I think it is important, in our multilateral trade.

Senator Hays: It has been said that "today's solutions are tomorrow's problems." What countries are introducing the same sort of legislation? I suppose it all becomes possible because of the Kennedy Round. Do you anticipate that we will have many more complaints due to the change in tariffs and the GATT negotiations in future? I am thinking of countries which may not be quite as ethical as Canada and which may try to get around the lowering of tariffs.

Mr. Labarge: If you are talking about complaints from abroad—

Senator Hays: From home, because of abroad.

Mr. Labarge: I would hope not. This is why I feel that our conduct always counts for something. If we are carrying out the law in a proper and just fashion, without extreme annoyance and frivolous pestering of people, and without having used the big stick too often, we will be in a situation where they will reciprocate. That will be easier than some of the situations we ran into earlier because of the automatic dumping.

Senator Hays: Can you give the countries which will be introducing similar legislation?

Mr. Labarge: There are many. There is the United States, the United Kingdom, Scandinavia.

Senator Hays: With the same legislation?

Mr. Labarge: Based on the same code.

Senator Hays: Is this the legislation which you were speaking about, that was put into effect on July 1?

Mr. Labarge: Yes.

Senator Hays: But, previous to that, these countries were not together in this?

Mr. Labarge: In other countries we had differences but on the whole there were none of them that had as automatic—

Senator Hays: So our trading partners will all be the same now, as regards anti-dumping?

Mr. Labarge: Yes, I do not think many have been left out.

Senator Connolly (Ottawa West): In regard to the two-price system—the domestic price and the export price—I shall start with an example. The figures I use are hypothetical. I understand that on the west coast, when gas is exported to the United States, the price in Vancouver is, let us say, 43 cents m.c.f., but the export price in the American northwest is 27 cents.

Mr. Labarge: The export price of Canadian gas?

Senator Connolly (Ottawa West): The cost of the Canadian gas to the American importers is 27 cents. Let us say for the sake of argument we are talking Canadian dollars here. This is the result of a contract. There is no bonus. There is no tax adjustment or concession. It is simply a contract. There may be other cases of the two-price system. Perhaps there is on wheat, is there?

Senator Hays: No. We compete. There are no subsidies.

Senator Connolly (Ottawa West): Well, in this case in the United States, would there be ground under this act for your opposite number down there to say that that 27-cent price is a dump price?

Mr. Labarge: It would, of course, be under U.S. law.

Senator Connolly (Ottawa West): I know, but assume that they have this law.

Mr. Labarge: Suppose it were working the other way, you mean?

Senator Connolly (Ottawa West): What about our own exports?

Senator Hays: This is hypothetical.

Senator Connolly (Ottawa West): Purely.

Mr. Labarge: It is really hypothetical and, number one, I am not sure that I would be expecting this kind of an arrangement to have been arrived at on an international basis with such a commodity without all the producers in Canada being somehow or other in it in a way in which they would benefit. There must be a reciprocal benefit. Number two, I would not expect them to claim injury or expect them to make a complaint of dumping.

The Acting Chairman: Basically, the law in the United States would still require two things: evidence of a dumping, a difference between the normal value in the country of export and the value at which it is being imported in the United States, and, secondly, injury. Those two principles will still be applicable to anything.

Senator Connolly (Ottawa West): I understand that this is actually done. They cannot sell that gas unless they sell it at a lower price than the domestic price.

Senator Hays: This is an actual case.

Senator Connolly (Ottawa West): Yes.

Mr. Labarge: We are talking about international agreements, and governments do not enter into these on behalf of the industries concerned, I am sure, without there being some overall policy to which they abide in their own interest. So I think we are going rather far.

Senator Connolly (Ottawa West): There may be some other provision of law. Let me take another concrete example. Suppose Great Britain, who are trying to correct their balance of payments situation so desperately, gave tax concessions or bonuses for export and some of these goods came to Canada. Would you be looking at those concessions when looking at the problem of whether or not the goods were being dumped?

Mr. Labarge: This is not new to us. This is old hat, because we have had to do it. There are only certain kinds of taxes, for instance, that can be extracted from the home market price for the purposes of export sale. Now, into this kind of thing you can bury all other kinds of taxes which are not eligible for this kind of refund because they are not taxes that apply to the goods. And depending on what the exporting government does, it can even add, apart from the remission of these taxes, certain other incentives for export. Well, that does not wash, if it is a subsidy or if it is an overdeduction in a class which is permitted up to a degree and under certain conditions and by the nature of the tax. So there is where we talk about countervailing duties. Perhaps you recall what happened when the French Government was going to remit certain taxes: immediately, the United States said that if this went too far they would apply countervailing duties. So this is where you have the same answer.

Senator Connolly (Ottawa West): They can do that despite the fact that this was in effect.

Mr. Labarge: Yes.

Senator Connolly (Ottawa West): And we can, too?

Mr. Labarge: Yes.

The Acting Chairman: If there are no other questions, I have a draft report that the committee might like to hear.

Some hon. Senators: Agreed.

The Acting Chairman: The draft report reads as follows:

The standing Committee on Banking and Commerce to which was referred the "White Paper on Anti-Dumping" has in obedience to the order of reference of December 9, 1968, examined same and reports as follows:

Your committee has considered the White Paper on Anti-Dumping tabled in the Senate on December 9, 1968, and in particular the draft bill contained at pages 40 to 100 thereof. Your committee has also considered the amendments to such draft bill proposed by the Standing Committee on Finance, Trade and Economic Affairs of the House of Commons as reported in the journals of that House on December 9, 1968. Your committee recommend that the draft bill, amended as so proposed, to the Senate for its favourable consideration.

All which is respectfully submitted.

Now, we did have at our previous meeting, which we have not discussed today, the proposed amendments made by the House of Commons committee. I am not aware whether or not those amendments have been put into the bill. There is one particular amendment that I did not agree with, if I understood it correctly. I would like to ask Mr. Labarge a question about it. It is the definition of "associated persons". It reads:

Associated persons are persons associated with each other; persons dealing with each other at arm's length, within the meaning of subsection 5 of section 139 of the Income Tax Act.

I do not find any definition of associated persons in that subsection. There is a reference to "arm's length" to say that it is a question of fact. I would have thought that in any event associated persons were those who

were not dealing at arm's length rather than persons who were dealing at arm's length. If this appears in the bill that comes to us, I will have something to say about that.

Mr. Labarge: You are absolutely right, Mr. Chairman. The word "not" has been left out.

The Acting Chairman: If we can treat that as being only a clerical mistake, perhaps the wording in this report, then, would still cover the amendments as we understand them. If we want to leave it, this still leaves the Senate free when the actual bill does come to us.

Senator Flynn: We do not know whether the bill that was introduced last night is exactly in the same words as this draft. Could we not say that, if the bill that is going to be sent to us by the house is in the same terms, we will recommend it? And if there are any changes we can suggest that these changes be considered by the committee in due course. It is rather late to go out on the limb and say that we recommend this when perhaps there will be some changes in the bill as presented to the house or as it reaches us.

Senator Connolly (Ottawa West): Mr. Chairman, I am not the Leader of the Government, but I wonder whether Senator Flynn and the committee would accept the following suggestion as being a wise course to pursue. I understand the bill received second reading in the other place last night.

The Acting Chairman: I understand there is agreement among the parties—originally for two days—and now there is one day left.

Senator Flynn: They will probably finish with it there today.

Senator Connolly (Ottawa West): Before you put your report in, might we not have a short meeting of the committee again to see if in fact the situation is as the proposed report suggests?

Senator McDonald: Mr. Chairman, if I might make a proposal; the purpose of referring the White Paper to the committee rather than waiting for the bill was to avoid the situation arising where we would be asked to give first, second and third reading to the bill at short notice, which is a situation to which many honourable senators have objected in the past. The present report is a report on the draft bill and the White Paper, and I would suggest that we proceed with this report, and if when the actual bill comes before us we

find that its terms are the same as what we have been dealing with, then there will be no need to send the bill to committee. But if we find that the bill is substantially different, then I would suggest that the bill itself would have to come back to this committee.

The Acting Chairman: If we were to add a clause to this report to the effect that if the bill reaches the Senate in a form different from the draft bill as above amended, the committee believes that such bill should require further attention, or words to that effect. If that is acceptable to the committee I would suggest that the actual wording could be settled upon as between Senator

McDonald, Senator Flynn and myself. Is that agreed, honourable senators?

Hon. Senators: Agreed.

Senator Connolly (Ottawa West): This has been very helpful.

The Acting Chairman: Any other business?

May I thank Mr. Labarge, Mr. Hind and Mr. MacDermid for their kindness in coming before us and for the great help they have given us.

The committee adjourned.



First Session—Twenty-eighth Parliament

1968-69

THE SENATE OF CANADA

PROCEEDINGS

OF THE

SENATE COMMITTEE

ON

BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 14

WEDNESDAY, JANUARY 29th, 1969

First Proceedings on Bill S-17,

intituled:

"An Act respecting Investment Companies".

WITNESSES:

Department of Finance: A. B. Hockin, Assistant Deputy Minister.

Department of Insurance: R. Humphrys, Superintendent.

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UNIVERSITY OF TORONTO

THE SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Lang
Aseltine	Desruisseaux	Leonard
Beaubien (<i>Bedford</i>)	Gelinas	Macnaughton
Benidickson	Giguère	Molson
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Inman	Welch
Connolly (<i>Ottawa West</i>)	Isnor	White
Cook	Kinley	Willis—(30)

Ex officio members: Flynn and Martin

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday,
January 22nd, 1969:

“Pursuant to Order, the Senate resumed the debate on the motion of the Honourable Senator Desruisseaux, seconded by the Honourable Senator Sparrow, for second reading of the Bill S-17, intituled: “An Act respecting Investment Companies”.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Desruisseaux moved, seconded by the Honourable Senator Sparrow, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.”

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, January 29th, 1969.

(15)

Pursuant to notice the Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien (*Bedford*), Benidickson, Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Gélinas, Giguère, Haig, Hollett, Inman, Kinley, Macnaughton, Molson, Thorvaldson and Walker. (21)

Present, but not of the Committee: The Honourable Senator Phillips (*Rigaud*).

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Upon Motion it was *Resolved* to print 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill S-17.

Ordered: That the Clerk arrange to have the proceedings of this meeting printed and distributed as quickly as possible.

It was further ordered that any briefs now in the hands of the Committee be distributed to the Senators in advance of the parties submitting same appearing before the Committee.

Bill S-17, "An Act respecting Investment Companies", was read and considered and the following witnesses were heard:

DEPARTMENT OF FINANCE:

A. B. Hockin, Assistant Deputy Minister.

DEPARTMENT OF INSURANCE:

R. Humphrys, Superintendent.

It was agreed that clause 8 be discussed at length at the next meeting of the Committee.

At 12.15 p.m. the Committee adjourned consideration of the said Bill until Wednesday, February 5th, 1969, at 9.30 a.m.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

THE SENATE

THE STANDING COMMITTEE ON BANKING, TRADE AND COMMERCE

EVIDENCE

Ottawa, Wednesday, January 29, 1969

The Standing Committee on Banking, Trade and Commerce, to which was referred Bill S-17, respecting Investment Companies, met this day at 9.30 a.m. to give consideration to the bill.

Senator Salter A. Hayden in the Chair.

The Chairman: Honourable senators we have before us today Bill S-17, which is regarded, I think properly so, as a very important piece of proposed legislation. I think we should have a *Hansard* report, so may I have the usual motion for printing 800 copies in English and 300 copies in French.

(Motion agreed to)

The Chairman: I should like to make this suggestion. These sittings are likely to go on for some time, because we have had a number of inquiries, and many organizations and associations have written in. Some of those letters have indicated certain points of view which are not in accord with what is in the bill. In one instance we have a brief, and quite an extensive brief. The chairman has been taking the position, expecting your support, that any member of the public who wishes to be heard, who is touched or affected in any way by this bill, will be given the opportunity to be heard before we finally conclude our hearings. I have consulted with authorities in the other place and this is a view which they support, that they want full public participation to the extent that the public wish to participate in the deliberations and consideration of this bill.

I therefore think that the *Hansard* report of each meeting should be available at the next hearing, and as the wish or instruction of the committee I would ask the *Hansard* reporters to take note that it is desired by the committee to have the report of one hearing available at or before the time the next hearing

takes place. The Clerk of the Committee, Mr. Jackson, has shouldered that responsibility, so he is the one to insure that that is done, even if he has to do some of the typing himself!

Let us pass to how we should proceed this morning. The officers immediately concerned who have duties to perform under the proposed bill are here this morning. Mr. Humphrys, of course, we all know, the Superintendent of Insurance. By title of position he is mentioned quite often in the bill and is given specific duties. We also have Mr. Hockin, the Assistant Deputy Minister of Finance, and Mr. Treuil, a research officer in the Department of Insurance is here. I understand there are some observers present today, I think on behalf of people who may subsequently make representations.

The plan as I see it at the moment would be to discuss the contents of the bill with the departmental officers, and then with that background hear all the public representations, during which the departmental representatives would be present. When we reach that stage we can consider if there are any deficiencies in the bill, if the bill goes too far, or if there are matters of substance that should be changed. We can look at it at that stage when we have the full information.

With that in mind, I would like to invite Mr. Humphrys, Mr. Hockin and Mr. Treuil to come forward, and then we can carry on.

Senator Thorvaldson: Mr. Chairman, can you give us any idea now how many persons or groups have requested to appear before the committee to make representations on the bill?

The Chairman: We have had seven different organizations plus two or three who are wavering as to whether they will appear or not to make representations, but they will follow the proceedings and it depends on how

they develop whether they appear. There are one or two who have not reached the stage of advising us of their position, but I have learned that they are proposing to prepare a brief.

Senator Thorvaldson: You referred to one brief being in. Is that the Massey-Ferguson brief that has been sent to all senators?

The Chairman: The brief we have is a submission by the Association of Canadian Investment Companies, with the support of a group of Canadian corporations concerned with investment. This is the one that has actually been filed. We have had a communication from the Canadian Bar Association at various points—Toronto, Vancouver, Montreal. The communication of Alcan Aluminum was addressed particularly to the definition of the "Business of investment" and "Investment company". In their letter they proposed certain exceptions to any broad definition. Whether or not they will appear, I am not in a position to tell you yet because I acknowledged their letter and indicated when we would be sitting and that we would be prepared to hear any representations they wanted to make.

Then there is the Industrial Acceptance Corporation, Molson Industries, the Chartered Institute of Secretaries. Then there is a lawyer in Quebec City, André Verge, and these additional ones which, I think, until they commit themselves maybe I should not put their names on the record, but we know they exist and are contemplating appearing.

Senator Croll: Those people who are likely to appear and have briefs, I think it would be well if we saw those briefs a little ahead of time.

The Chairman: That is what we have indicated, and we have one now which we propose to distribute. I wondered where the senators wanted the brief delivered. Usually we distribute copies to senators, and they get to their chambers, and then the senators come to the sittings and have not the brief with them. Then we run out of copies. We have been furnished with only so many copies.

Senator Croll: I think we should have an opportunity to read or glance through the brief before they appear; otherwise it is very difficult to get the context.

The Chairman: We will see to it that the brief now in is distributed; and there is a

second short one. As quickly as others come in they will be distributed. Any of the correspondence not reaching the stage of a brief, which contains suggestions, we will make copies of and distribute.

Are there any other generalizations before we start?

Senator Connolly (Ottawa West): I take it you are going to hear the officials this morning, Mr. Chairman. Is there any way of knowing how soon the general report will be available? Perhaps that might cut down on some of the representations made.

The Chairman: I have been trying to analyze that, and on the basis of our sitting our usual time each week, and realizing we will have other bills we must consider, it would appear that between now and the end of February, say, there might be the opportunity for at least five meetings that might each run two or three hours in the day.

My own feeling is that we will use most of that time, and if there is any adjourning or delay, which might be for the purpose of consideration by the departmental officers of all the submissions that have been made and their determination as to how far they would suggest going in the way of change, that will only be a guide to us and would not bind us in any way.

Senator Connolly (Ottawa West): My question was really on the other side of the coin, Mr. Chairman. It occurred to me that perhaps some of the explanations given today, for example, might cut down the number of briefs. If the answers given by the officials satisfy some people who think they might want to come, these people, after what they see, might not wish to attend. It is only a suggestion I make, that although you cannot control it, perhaps the Senate committee officials might see that we get the transcript as early as possible.

The Chairman: I raised that in the beginning, and our clerk has been instructed and has undertaken the responsibility to see to it.

The Clerk of the Committee: I have also undertaken to provide copies of these proceedings to people who wrote in.

The Chairman: Yes, so that they will be well armed.

From discussions I have had with those charged with the responsibility of planning in a forward manner legislation to come forward

in the Commons, it has been indicated that the important thing, and the most important thing here, is that the bill be fully considered and that every member of the public who wants to be heard, and has any representations to make, is heard and that his submissions are considered; and whatever we do in the way of changes, if any, that is our business.

Certainly, speed is not the essential thing. In other words, there is not underwritten in this that time is of the essence. The time here is the time it will take to do as good a job as possible, having regard to what can be done in what the bill proposes.

Senator Molson: Mr. Chairman, could I just ask, of the organizations who have expressed interest in appearing, how many briefs have actually been received?

The Chairman: Two.

Senator Molson: So far?

The Chairman: Yes. There have been two, and I mentioned the letter from Alcan. Whether they will actually appear I suppose depends on how this hearing unfolds itself. Their letter appeared to be directed to the scope of the definition of "business of investment" and "investment company".

Senator Molson: I think this may be the problem in many of those.

The Chairman: I think it will be. For the ones who think they should not be included and that the definition is too broad, that will be their approach; and for those who feel that, in any event, they are going to come within the scope of an "investment company," they might suggest there should be better guidelines than authority by regulation, for the Superintendent of Insurance and the Minister to have the broad authority by regulation which is proposed in clause 22 of the bill.

Senator Desruisseaux: It is my understanding that Power Corporation also are sending in a brief.

The Chairman: I would say this, that Power Corporation was the first organization which was in touch with me after the bill was introduced, and even before you gave the explanation on second reading. They have been in touch with great regularity since. I do know this, in regard to the brief that we have had from the Association of Canadian Invest-

ment Companies, that the secretary of that association is from Power Corporation, so that Power Corporation has, in some way, had something to do with the preparation of this brief, and we must take it, until they say otherwise, that their views are incorporated in this brief of the association.

Senator Macnaughton: Mr. Chairman is it anticipated to sit on Wednesday morning and afternoon?

The Chairman: I am not sure it is anticipated today. I did not think we should plan for a full day today. The committee can make its own decision afterwards, but there are other committees sitting, and I did not feel, without the view of the committee, that we should take the whole day. I think that if we have two, 2½ or three hours today, we will have some more information than we have now.

We have three able representatives here. Have you agreed among yourselves which one is going to carry the load in the first instance?

Mr. Humphrys tells me that he is going to make the first presentation.

The second question is that I thought that before we get into any questions that are directly on the bill or arise out of that, that we might ask Mr. Humphrys to rationalize the purpose—what is the area that is sought to be reached by this bill and what prompted it; what, if any, participation did the public take as a result of which this was put together. Are those sufficiently broad terms of reference, Mr. Humphrys?

Mr. R. Humphrys, Superintendent, Department of Insurance: Yes, Mr. Chairman.

The Chairman: Then will you take over?

Since this is not in the nature of a prepared statement or brief, such as would be the case if Mr. Humphrys were addressing himself to the bill, as long as we do not interrupt him between words, and as little as we can between sentences, certainly he should expect questions between paragraphs.

Mr. Humphrys: Thank you, Mr. Chairman.

Mr. Chairman and honourable senators, the purpose of this bill is to establish a system of reporting and inspection for companies that are engaged in any aspect of the business of a financial intermediary, and in due course to establish a system of control for those companies that are in a weak or dangerous financial condition.

As you all know, we already have quite an extensive system of supervision, reporting, inspection, and control for the major classes of companies that are acting in some respects as financial intermediaries. These are banks, insurance companies, trust companies, and mortgage loan companies. There is, however, another group of companies that are engaged in borrowing money on debt instruments and using a significant proportion of their funds for investment purposes, as distinct from purposes relating directly to commercial and industrial activities. This group of companies is not now subject to any regular system of reporting, supervision, or control.

The companies concerned in that federal field are for the most part incorporated by Letters Patent. They have certain obligations under the Corporations Act in respect of reporting, but the reporting requirements there are not of the type designed to measure financial solvency, financial condition, or otherwise to regulate their activities except, perhaps, in so far as they are required to remain within their corporate powers.

It is true also that companies of this type that borrow in a significant way in the public market are required to comply with the requirements of the securities acts in the several jurisdictions that have such legislation in force, and in which the companies are operating.

The companies, however, that are covered by the proposed legislation are federally-incorporated companies. They may or may not be operating in jurisdictions that are subject to securities regulation, and they may or may not be operating in circumstances and in terms that make them subject to securities regulation. In any event, it must be recognized that securities legislation is essentially disclosure legislation, which really leaves it to the investor to make his own decision on the basis of the information that is made available to him.

In one philosophy it might be argued that this is sufficient; that if there is enough information available, the Government at any level need not be concerned about losses that investors experience as a consequence of their own action, whether they understood the information that was available or not. We have, however, observed in the last few years—quite recent years—collapses of groups of companies that were in the financial intermediary business in one fashion or another. While one may have sympathy, or lack of sympathy, for those who lost funds in

those collapses, no one can deny, I think, that those events have had a very damaging effect on our financial community, on the confidence of investors, and even an effect on investors outside Canada.

The Chairman: Mr. Humphrys, on that point, I recall—and I am sure the members of the committee do—the names of the companies involved in, and the circumstances of, a number of those major collapses. It appears to me that quite a number of them were provincially-incorporated companies. Is that right?

Mr. Humphrys: Yes, Mr. Chairman, that was, in fact, the case.

The Chairman: Have you any record of the number of federally-incorporated companies operating in this area which have been the subject of any such collapse in, say, the last five years?

Mr. Humphrys: I am not aware of any federally-incorporated companies that have been involved in difficulties of that type.

The Chairman: Of course, our jurisdiction here is limited to federally-incorporated companies?

Mr. Humphrys: Yes, Mr. Chairman, that is correct.

The point I wished to make was that notwithstanding the disclosure type of legislation that has been in effect through the securities acts, trouble did come and collapses did occur, and the damage spread not only to the investors but beyond, and had its effect on the whole financial community.

Federally-incorporated companies which are the subject of this bill are not now subject to any regular supervision, inspection, or reporting on the part of federal officials. It becomes an important question whether companies should be incorporated at one level of government, and given permission to operate throughout the country, which is the essential power of a federally-incorporated company, and engage in the business of borrowing from the public for investing, without the Government that created those corporations assuming any responsibility, at least, for determining what the companies are doing, and the state of their financial solvency and strength.

Now that, Mr. Chairman...

The Chairman: I think Senator Gelinis wants to ask you a question, Mr. Humphrys.

Senator Gelinas: Mr. Humphrys, do you know what the ratio between federally and provincially-incorporated companies is?

Mr. Humphrys: Senator, I cannot answer your question, but I am just coming to a point that I think bears on it and which is significant. I am referring to the definition that appears in this bill of the types of companies to be covered.

Senator Burchill: Mr. Chairman, may I ask a question?

The Chairman: Yes.

Senator Burchill: Has the Province of Ontario—to take one province—any legislation similar to what we are discussing here for its provincially-incorporated companies?

The Chairman: No.

Mr. Humphrys: Not precisely similar, senator, but they have adopted special regulations under their Securities Act which are aimed at finance companies, within the definition in the regulations, and at investment companies. But, it is still within the concept of securities legislation which requires certain types of reporting to the Securities Commission for the purpose of public disclosure. The Commission can regulate through that information the right or the ability of a company to float securities in the jurisdiction covered by that provincial legislation.

The Chairman: I think in the Ontario Securities Act the jurisdiction that is exercised by the Securities Commission is such that at any time, in relation to any company that has been the subject of qualification of its securities, investigators from the department may move in and check the records and operations.

M. Humphrys: Yes, that is correct.

The Chairman: They assume that broad power and—well, it is difficult to challenge it because you have a *de facto* system where its continuance depends upon the continuance of the qualification.

I am sorry, Mr. Humphrys, If I have diverted your thoughts.

Mr. Humphrys: That, Mr. Chairman, is the general background. I should add to that the fact that, because of the absence of a regular system of reporting and inspection, we simply do not know how many federally incorporated companies are active in this general field

which I have been discussing, that is, raising funds on the basis of debt instruments and using a significant proportion of the funds for investment. We simply do not know how many companies are in that business, we do not know the variety of companies, we do not know all the ramifications of their particular type of operation, and we do not know the financial strength. We know some, some prominent companies, they are well known to anyone concerned with financial matters; but we have no regular or reliable body of information that permits us to answer the very question that you posed to me.

Part of the concern of this bill is to establish a system where, initially at least, we would obtain information on a regular basis and have it flow into a particular administrative setup, whose job it would be to analyze it and become knowledgeable about it, to analyze the different companies and be in a position to advise the Government as to what special legislative structures might be appropriate, what special adaptations to rules and regulations might fit different types of companies.

One of the very important and very difficult problems, and perhaps the main problem that faces one, and that faced us when we first began to consider this, was: what are we dealing with, how many companies are involved? The principal reason for the broad definition, that I am sure strikes everyone forcibly when they first pick up this piece of legislation, is to enable us to get a regular flow of information, so that we can answer the very question that you posed and we can be in a position to make worthwhile and sound recommendations to the Government as to regulatory provisions that may be appropriate for different types of companies. We recognize that in this definition, the very broadness of it, it covers a great variety of companies, not only companies that people normally think of as investment companies but it goes far beyond that. That was recognized and it was intended for the purpose of gathering the information.

The Chairman: Is this a fair layman's statement, if I can get myself into that position, of the purpose of this bill—that is, that it is to acquire knowledge of, and to control, if necessary, and supervise the use to which money is put by an investment company, which money has been raised through the sale of shares or the sale of securities?

Mr. Humphrys: Mr. Chairman, I do not think I could answer that question categorically. I would say that this bill does not propose to regulate or restrict the general classes of investment, the general uses that an investment company will make of its funds, with the exception of clause 8—which is aimed at transactions that are within arm's length. It does not propose to lay down classes of eligible investment, in the manner that, say, the Insurance Companies' Acts do, and the Trust Companies Act does.

In preparing the bill, it was recognized that the variety of companies were so great that no one set of investment provisions would do—and indeed, it may not be appropriate at all to have prescribed classes of investment for companies of this type.

The main emphasis has been on gathering information; but the emphasis on gathering information and supervision is aimed at companies that borrow on debt instruments as distinct from companies that raise the money only on the sale of shares. If a company raises its money only on the sale of shares, it would not be subject to this act.

The Chairman: Now, just a minute. I think it is too early to get into the legal aspects of this, but I think there is a serious question as to whether, legally, in the language of your definition, that that is a correct interpretation—because proceeds of the sale of securities may be something less than the use of some or all of the assets of a company. For certain investments, the assets would include proceeds from the subscription for shares.

Mr. Humphrys: Yes, Mr. Chairman.

The Chairman: Now, this is the language that you use. True, you are not subject to this bill and the provisions, unless you borrow money.

Mr. Humphrys: That is correct.

The Chairman: So you can be wild and carefree, if you want to, and have that risk nature, as long as you just have subscriptions for shares.

The moment you borrow money, that is one of the conditions which brings you under the scope of the act—no matter what you use afterwards to make your investment.

Mr. Humphrys: That is a correct analysis, Mr. Chairman. The philosophy is that, if a company raises funds for investment solely through the sale of stock, that the purchasers

of that stock become participants in the success or failure of the company. They are members of the company and the question of determining the solvency of the company or its obligations to the public does not arise. The people who have put the money into the company through the purchase of stock are members of the company and in purchasing those shares they undertook to abide by or to live with the fortunes of the company. As a consequence, the whole class of mutual funds, for example, would not be subject to this legislation.

Senator Molson: So far as the protection of the public is concerned, is that because they buy shares, they need less protection? I think of some of those beautiful mining promotions, and things like that. Do you think those people are adequately and completely protected?

Mr. Humphrys: They may not be, Senator Molson. The approach in this legislation is aimed at areas where their abilities to meet obligations to the public can be measured in terms of their financial statement. If a company has raised money only through the sale of stock, as opposed to, say, any investment company or a mutual fund, it is not possible to determine a solvency provision in relation to the stockholders, because their right as respects the stock is what is in the company. You cannot measure a solvency question in the way you can when a company has a fixed dollar obligation to the public.

The Chairman: Is not this what you have been doing over the years in the various statutes under which you have inspection and control in relation to investments? For instance, in the Canadian and British Insurance Companies Act, the Trust Companies Act and the Loan Companies Act there are provisions outlining the kind, qualification and conditions of investment in preferred shares and in common shares. Yet when all this reporting comes in to you, in your capacity as Superintendent of Insurance it is part of your task to evaluate or appraise the value of those things to see whether they come within the conditions and satisfy those conditions, and secondly as part of your overall appraisal to see whether the relationship between the assets and liabilities of the company is getting out of line. In doing that you have to appraise the value of the stocks as well as the value of the bonds, the real estate and the other items, so in that connection, and in order to outline the conditions of investment in those statutes

I have referred to, they do extend so far in some fashion to deal with stock positions.

Mr. Humphrys: In a secondary fashion they do. The primary purpose of these statutes, however, arises from the fact that those companies have fixed dollar obligations to the public, either through insurance contracts, through deposits accepted by trust companies, through investment certificates issued or through debentures issued. The legislation is aimed at protecting those people and it regulates the use the company can make of the funds they gather from the public and the use they can make of the funds they get from their shareholders, all with a view to maximizing protection to the policyholders, debenture holders or depositors.

In this bill we have not proposed to lay down particular classes of authorized investments, for two main reasons. First, there is such a variety of companies that at this stage we are simply not in a position to make any sound recommendation as to eligible classes of investment. Secondly, there is a question whether the technique of specifying particular classes of eligible investments should be carried over to those classes of companies.

It is quite appropriate for certain classes of companies, for insurance companies and the other types I have mentioned. However, when we get to banks, there is very little in the Bank Act as respects specification of eligible investments, and for these types of companies, at this stage at least, there is no proposal here to try to restrict the general classes of investments.

The Chairman: Would you agree with the statement that generally speaking those who subscribe for bonds are more knowledgeable than those who subscribe for shares, with respect to investments?

Mr. Humphrys: I think I would have to say that I do not know. I would not make a categorical statement.

Senator Giguère: How would you classify a company that raises capital from the public with the issue of convertible bonds, bonds that could be converted into equity in a certain period of time?

Mr. Humphrys: Within the concept here they would be regarded as raising money on debt instruments and would be covered until it is converted.

Senator Giguère: Until such time as it is converted into common shares and really be controlled?

The Chairman: Yes.

Senator Croll: Mutual funds are of great importance and growing very rapidly. I have listened to you and gathered that there is nothing in this bill which could reach mutual funds in any way. Is that correct?

Mr. Humphrys: That is correct.

Senator Croll: Can you say how they are supervised and why we take no action with respect to them?

The Chairman: You mean why he has eliminated them from consideration in the bill.

Mr. Humphrys: First, in an attempt to arrive at a category of companies, broad though it may be, this bill singles out the companies that borrow on debt instruments and stops at that. Part of the reason lies behind the point we have just been discussing, whether the eligible classes of investment should be specified or not. If we were to take the view that we wanted to increase the protection for shareholders as well as creditors, then I think we would have to emphasize to a greater extent than this legislation does the asset side and the eligible assets. That is the first point.

The second point is that there is a federal-provincial committee now engaged in a study of the whole subject of mutual funds. The committee has almost finished its study, and I believe a report will be forthcoming within a short time. I think all the governments concerned are awaiting that report before proposing legislation in that field.

The Chairman: I think too that in the consideration Mr. Justice Hughes is giving in the Atlantic Acceptance case, where judgment may come out within the foreseeable future, the different problems that arise—which I think you have even referred to as making it necessary or advisable to have some measure of control—may all be found in that situation?

Mr. Humphrys: It could well be.

The Chairman: Therefore, there may be some benefit to us in this report in considering legislation.

Senator Carter: I should like to confirm my understanding of what Mr. Humphrys has said. If I understood him correctly, this bill is designed to set up machinery in an endeavour to protect the public in two ways. The first way is to keep an eye on what companies do, what use they make of money they borrow from the public, and the second is to step in somewhere if it is found that a company is getting on thin ice, to be able to take some action to prevent disaster.

In the second case, at what point, and what machinery do you have for stepping in? What powers do you have? To what extent can you interfere with management or managerial decisions in the running of that company? At what point do you feel you should step in and take some action? And, when you have decided that time has arrived, what powers do you have to alter managerial decisions?

Mr. Humphrys: The proposals in this bill in that regard are contained in Part II, which is the second phase, and they have been modelled, in principle, on the powers and authority that exist under legislation such as the Insurance Companies Acts, the Trust Companies Act and the Loan Companies Act. They are spelled out here in somewhat more detail than in those acts, but the essential procedure is that the Superintendent of Insurance, being the administering official, is expected to be closely in touch with and well informed about the financial position of those companies on a continuing basis, as a consequence of regular statements filed with him, as a consequence of auditors' reports, and as a consequence of inspection by his own staff, if necessary. If he forms the view, to use the wording used in this bill, that the ability of the company to meet its obligations is inadequately secured, he is required to report that fact to the Minister of Finance, who is the responsible minister; and he is also required to inform the company of the action that he has taken. The minister then...

The Chairman: Wait a minute, then. That is as far as Part I goes.

Mr. Humphrys: This is in Part II.

The Chairman: Part I goes so far as...

Mr. Humphrys: ...reporting and inspection.

The Chairman: Yes, reporting and inspection.

Mr. Humphrys: But it contains no powers.

The Chairman: I am not talking about powers, but Part I goes as far as you have described, where you have gathered your information voluntarily or by inspection, you have made your report to the minister...

Mr. Humphrys: No, there is no report to the minister in Part I, Mr. Chairman. Any action on the basis of information gathered is spelled out in Part II only, so that the implementation of Part I puts us in a position to gather information and to inspect, but it does not put us in a position to do anything about it.

This might seem odd, that the power to act is in Part II, which will not come into effect, under the terms of the bill, for at least two years after Part I is in effect. But the reason for that is that...

The Chairman: May I interrupt for a moment? I had in mind in Part I, subsection 6 of section 5, which deals with the annual statement that is required under this bill, not the annual statement of the company. Subsection 6 of section 5 provides authority for you to require additional information, other than what you may get by the annual statement furnished and by what your inspectors produce. The purpose of it is, as you may consider necessary to enable you to ascertain the financial condition of the company and its ability to meet its financial obligations.

Part I takes you that far, so I would assume that at that time you are in a position to say and to recommend, if you had authority, at that stage to the minister that this company has distorted its relationship between assets and liabilities. But Part I stops short of any action resulting from your determination of the information you get.

Mr. Humphrys: Yes.

The Chairman: And yet it is proposed to have Part II, which is the sanctions part, not come into force for two years.

Mr. Humphrys: Yes, Mr. Chairman. As I think you mentioned in your speech, Mr. Chairman, the reason for that is our innate caution. We know there is a wide variety of companies dealt with in this bill. We know it would take some time for an administrative team to gather information, to become knowledgeable about the companies, and to reach the point where we were in a position to make an intelligent analysis of the company and undertake the heavy and serious responsibility of doing all the reporting and controlling under Part II.

We do not think that until we have had a chance to gather this information and become thoroughly knowledgeable in the field, and to understand the operations of the various companies concerned, that we should put the minister or any Government minister in the position of having to issue a certificate or having to withdraw a certificate. These are important powers which should not be exercised until there is enough knowledge and sound enough administrative machinery to give confidence to the Government, to the public and to the companies concerned that such powers are going to be exercised with intelligence and with discretion.

The Chairman: But in a particular case, as a result of that method of proceeding, you may be sitting with all that information you have gathered under Part I, and on the basis of that may have concluded the company is in a precarious position.

Mr. Humphrys: Yes.

The Chairman: Surely, should we pass a bill that would permit that situation to occur, and then there is no authority anywhere to do anything?

Mr. Humphrys: Mr. Chairman, that is indeed a difficult point, and one that has caused a great deal of discussion.

It was thought it would be a mistake to lead the public to think that Government officials were in a position to certify or otherwise take responsibility for the financial condition of any of these companies, until the point is reached where they know enough about them and about the complexity of some of the operations to exercise that judgment in an intelligent way.

If Part II were to come into force immediately and certificates had to be issued right away, I do not think it could be done in a manner that would provide the kind of atmosphere and the kind of supervision that is aimed at in this type of legislation, because what is aimed at here is the creation of a climate within which reasonable, justifiable and intelligent supervision and communication between the Government and the companies can be established, all with a view to creating investor confidence and a better climate for the companies to operate in. If the legislation and administration of it does not accomplish that, then either it should be changed or the administration should be changed.

Senator Molson: I think what Mr. Humphrys has just said makes very good sense, Mr. Chairman. However, I cannot help but think of all the work that is going to be done by all these companies over these two years to provide all this information. We all know how much work and what staff is required in companies today to answer all the requirements of Government. It seems to me that this broad definition will cover perhaps thousands of companies most of which can never be deemed to be investment companies. Every one of them is going to have to employ the staff necessary for the making of these returns, and have that staff sitting there while the Government approaches the matter wisely and with some precision. I think we should also take into account what these demands will mean to the businessmen.

The Chairman: But then, Senator Molson, you have a power to make all of this investigation and to gather all of this information under Part I, which is going to come into force right away. When Part II comes into force the department has no more authority and power in regard to inspection than it had the instant before it came into force. Part III is to come into force now, and one of the features of Part III, which we may discuss later, is section 22 which provides that the Governor in Council may make regulations.

Am I to assume that even though Part III comes into force you will not venture into any regulation under section 22 until you have a full understanding of the climate?

Mr. Humphrys: Yes, Mr. Chairman.

The Chairman: I point out that "climate" was your word; not mine.

Mr. Humphrys: Yes, Mr. Chairman, that was the intention.

The Chairman: So there will be no regulations for two years?

Mr. Humphrys: Not necessarily for two years, but there will be no regulations until we are in a position to recommend the regulations that seem to be appropriate. The kind of procedure that we have in mind in that regard is to consult with the industry and the various classes of companies. The kind of rules and regulations, if any, that are adopted under that section would be those that are really modelled on the practices of the better run companies. We will seek the advice and co-operation of the industry with a view to establishing rules and regulations that protect

not only the public but the better run portion of the industry from the activities of those companies that carry on in such a way that is damaging.

The Chairman: One of the things that disturbs me, Mr. Humphrys, is that you could under Part I ascertain all the facts at the end of the first year of operation of Part I, and not having sanctions under Part II in force you would sit there doing nothing. I do not think that that is in the interest of the public.

Mr. Humphrys: It is not a comfortable position, Mr. Chairman, but the point is a difficult one, and the responsibility for stopping a company from operating, or, indeed, permitting it to operate, is serious. It is considered that a start had to be made at some place, and that the best thing would be to start by learning about the operation, and gathering information about the companies, their operations, their problems, and the inner workings of their business, before taking on this responsibility. It is a first step, but it was thought it would be perhaps misleading to the public to let the public think that by passing such a law, the next day there would be some administrative team, expert in the wide variety of companies covered by this legislation, at work.

The Chairman: But you realize what would happen in that situation, do you not? The security of the bond holder might be deteriorating. The position of the creditors behind the bond holder necessarily would be deteriorating. The company while it is still operating may attract more creditors. You will present that situation to the public at some time in the future, and say: "All of this information, or at least enough of it, was in the possession of the Superintendent of Insurance, and nothing was done about it." I think we have to find some way of getting around that. That is my own personal view.

Senator Carter: May I ask a question, Mr. Chairman?

The Chairman: Yes.

Senator Carter: I am concerned about the mechanics of the procedure. The first step in getting information is this reporting of financial statements?

Mr. Humphrys: Yes, sir.

Senator Carter: That will occur at the end of the companies' fiscal years?

Mr. Humphrys: Yes, sir.

Senator Carter: Does that mean that on a certain date in the year you are going to be flooded with thousands of financial statements?

Mr. Humphrys: It depends. There probably would be a concentration, since the ends of financial years tend to be concentrated at the end of the calendar year, but it is not proposed to lay down a particular filing date. It would depend upon the financial years of the companies concerned. At the present time in our administration we get all the statements in on the 1st March.

The Chairman: Mr. Humphrys, I made a suggestion the other day as to a system of reporting quite apart from the filing of annual statements—something akin to the reporting that an insider must make in the months following his sale or purchase of shares of a company. Is that a practicable sort of thing? In that way you would detect earlier the course of investment, the changes in investment, and the volume of the changes. Therefore, you might be in a position where you could be more helpful to the creditors and the shareholders.

Mr. Humphrys: I think, Mr. Chairman, that such information would be very valuable to the supervisor. However, we are very conscious of the costs to companies in meeting the requirements, and we have always attempted to keep the reporting to the minimum that we think necessary to keep ourselves informed. We learn quickly about the pattern of operation of companies. When we have a group of companies to supervise it does not take too long to know from which ones we have to seek information on a monthly basis, and the ones in respect to which we can confidently rely on the annual statements. This bill gives the administrator the authority or power to call for additional information when he wishes. In our present administration under other acts we frequently call for monthly statements if we encounter a condition with which we want to keep in close touch. So it is a question, Mr. Chairman, of the volume of the flow of reports as against your assessment of the position of the company, and the necessity of the supervisor's keeping in touch on a day-to-day or a month-to-month basis.

Senator Carter: When the reports reveal that a company is, or half a dozen companies are, getting on thin ice, you then propose to

develop some regulations which will correct their financial circumstances? You have a big stick here with which to enforce the regulations. Do you envisage that under those regulations the minister, or someone, will be able to say to such a company, "You are holding certain shares that you should have never bought. You must get rid of them", or something of that kind? Just what do you do after that?

Mr. Humphrys: No, senator. If that power to make regulations is exercised the Governor in Council would enact regulations setting down certain rules within which all companies would have to live. The regulations would not be of a type aimed at requiring a particular company to change a particular transaction into which it had entered. The reason why that provision is in the bill—and I recognize that this is a broad type of power—is that at this stage, we are not in a position to propose appropriate rules to be enacted in legislation.

Secondly, we know that there would be a wide variety of companies covered by this bill and that one set of regulations might not be appropriate for them all.

Thirdly, it was thought to proceed without any power to lay down broad operating rules, might leave affairs even less under control than the chairman has called attention to.

Therefore, it was thought that this provision, this power, would be appropriate so that the sound operating rules could be enacted, if they appeared to be necessary. I would myself contemplate that, if that action were taken in due course, rules that were so enacted might will be placed in the legislation.

Senator Carter: These bad situations that demand action, would not these be the result mainly of poor managerial decisions, poor judgment on the part of management, rather than any attempt to do something illegal or to defraud?

Mr. Humphrys: I would think that would be the main classification of companies, yes.

Senator Carter: In that case, if you are going to set up a framework of rules which everyone has to operate inside, are you not going to curb, are you not going to fetter the companies that have good management and do not need that regulation?

Mr. Humphrys: Good management is perhaps usually reflected in the pattern that the company follows, for example, the volume of

debt it assumes in relation to its capital and surplus, matters of judgment such as that, where good management adopts sound practices and sound rules.

Where the trouble comes is where bad management goes beyond those guidelines that are voluntarily used by well managed companies.

The proposal for regulations that might be adopted under this type of power would be aimed at trying to put a check or some kind of limit on the extravagances of judgment of poor management.

The Chairman: I did not understand that to be Senator Carter's question. What I understood it to be was—and your answer was—that regulations which would be enacted would be general in their application, applying to the whole scale and yet the persons to whom it would apply, some of them may be poor managers and have poor judgment as directors in charge of an investment company; others may have vision and judgment, and ability to read existing facts and make projections that come true; and the third category would be those which are out to fleece the shareholders.

Now, when you introduce a general regulation, you are putting the limits of the regulations, whatever they may be, on all those categories. It may be that the ones who belong in the fleecing class need some different kind of regulation, and, it may be, regulations that would put them out of business. But this encroaches far on the real purpose of investment companies, and the benefit to the shareholders of the judgment of responsible and capable directors, and if they are going to have to heel, it is like getting a suit from a shelf that is made to the general size on a certain basis, otherwise you get a tailormade suit that is moulded to your own figure—or at least, in theory, it is supposed to be. Have you any comment on that, on the idea of general regulation?

Mr. Humphrys: If the general regulations enacted were such as to interfere with the activities of well managed and sound companies, then I think the regulations would be wrong. I think that any regulations that should properly be proposed under a power such as that, would be regulations that are really derived from the accepted practices of the well managed companies.

How else could anyone judge what rules are sound? I do not think persons administering this act are in a position to substitute

their judgment for the business judgment of sound, successful, well managed companies. I think one would have to go to those companies and say, how is it that they are sound, how is it that they are successful, what practices do they follow, should we not ask other companies to live according to the same kind of rules, to live within the same areas of judgments that these have found have led to their success?

The purpose of this kind of rule would be really to set up a kind of outside limit and say, well, beyond this everyone accepts as being dangerous: within it, it may or may not be dangerous—but no set of general rules can distinguish so precisely as to say that if you are on this side you are fine and if you are on that side you are in trouble.

The Chairman: This is a speculation, as to how the Governor in Council may function under clause 22, but the regulations that are in existence today may be changed in three months. Economic conditions are such, and the judgment of the directors, to the extent that it is interfered with by the regulations, will not permit them to do things which in their judgment is good business to do, notwithstanding the then economic situation. That is why, on regulations which may be here today and changed tomorrow, you may be influenced by the economic pattern. The directors, those who are well informed and capable, who have a broad view, may say "we can ride this out" and then they need a regulation in the meantime. For instance, in the Canadian and British Insurance Companies Act, there is some recognition of that in a provision which says that when you go to appraise the value of securities in the light of a depressed situation that exists, you do not necessarily have to appraise at the value that you might strike, at that very instant; you must not take a lower value than what it was in the last financial statement, and the idea of this is to prevent yourself from swinging too far, because of the then existing depressed condition, and you may do more harm than benefit to the company.

My own view, of course—you know what my view on regulation is—is that a regulation should be purely administrative; and under one or two instances here where we have gone with the idea of permitting the regulation, when we thought it was substantive law, we provided that in a certain period of time, whatever the regulation or definition was at that time, it then had the force of law and could only be changed by statute—and I

think these are really substantive things that really should be in the legislation.

Senator Connolly (Ottawa West): Mr. Chairman, if I may interrupt at this stage, I understood Mr. Humphrys to say, at the end of one of his statements, that if we got into a question of providing regulations, if they were broad enough in scope, if they were to be broad in their scope and to have teeth in them, that they should be put in the legislation rather than in the regulations. In other words, I infer from that that he contemplates this legislation being modified, after experience has been gained and amendments made to it, to have general application to special categories within this broad field which you define in section 2. I take it you contemplate the possibility of amendments to the act to replace things that you could now do only under section 22.

Mr. Humphrys: Yes. I think I could say that as far as my own views are concerned, if we knew enough about the companies that are being dealt with here to propose sound rules I would recommend that they be written into the law. But we do not, and this at least provides machinery for enacting rules if they are thought to be necessary. It also provides the other side of the coin that the chairman mentioned, the ability to change them more rapidly, which we have found from experience is frequently desired by the companies affected as long as they have confidence in the use of that power, because it enables them to adapt more readily. It works both ways. It may be dangerous on the one hand if you want protection against administrative recommendations. On the other hand it may be advantageous since it permits them to be adapted more readily to what will be, for time anyway, a fluctuating situation.

Senator Connolly (Ottawa West): I apologize for asking these questions, because I think we have got away from the prescription the chairman laid down at the beginning.

The Chairman: I think I contributed to it.

Senator Connolly (Ottawa West): Perhaps I could be permitted to ask this one further question. There is such a thing as having a certain prescription in an act and that can only be changed by act of Parliament. This is an inflexible thing almost because of the difficulty of getting amendments. There is such a thing as having a regulation, which can be arbitrary, which can be inadequate,

which can be discriminatory, which can be fluctuating for a company, and then it is a matter of that section of the industry persuading the officials that a regulation of that character should be changed, or if you are writing it that it should be written in a certain way.

Then there is the other authority, I think, which you would probably have under section 22, to issue rulings in certain individual instances. For example, you might be confronted with a practice. You talked about companies' practices and the practice within industry. You say you would like to know more about what their practices are and how good and sound these practices may have proven to be in fact. You may be required at times perhaps to issue a specific ruling that you can do a certain thing at a certain time and still be within the ambit of the act and not offend the regulation.

The Chairman: On the point you are making, I think the provisions of the bill go this far. The company gets a certificate of registry and if any of these situations develop which you envisage in the proposition you are putting forward the minister does have the power to suspend the certificate of registry and immediately to issue another certificate, so that the people are not out of business. However, they do not call it a ruling; they call it "with conditions" in the certificate. If you are prepared to adhere to the conditions you can still operate, because the moment your certificate is cancelled you cannot operate. That is a correct statement, is it?

Mr. Humphrys: Yes.

Senator Connolly (Ottawa West): Having asked the question, I appreciate what you have said and I should like to suggest, Mr. Chairman, that we return to the original idea you enunciated.

The Chairman: Mr. Hockin has something he wishes to say first, and then we can get back on the rails.

Mr. A. B. Hockin, Assistant Deputy Minister, Department of Finance: The comments I want to make are really addressed, I think, to the question you raised, Mr. Chairman.

Senator Kinley: Mr. Chairman, there is one question I should like to ask.

The Chairman: Mr. Hockin has a statement to make, then we will get back to your question.

Mr. Hockin: The comment I wish to make relates to the desirability of being in a position to take some action when you began to know that a company was in difficulty and the criteria that you use for knowing whether the company was in difficulty. I think the problem Mr. Humphrys faced in trying to draft the bill as it appears before you was the very one he has emphasized, that the development of modern financial institutions, or modern institutions generally, has been very rapid in the last few years. The nature of their business has been developing rapidly, has been capable of change within the well known patterns of behaviour of corporations, and the whole sophisticated financial community is having difficulty in understanding all the thrust of these movements, let alone the unsophisticated investing public.

Certainly the attempts that have been made in recent years within the financial community to understand more about the nature of the activities of some of these companies and what is considered sound practice and what is considered unsound practice lies, I think, behind what has been described as caution in this approach.

I think we have been very much aware of studies that have gone on, for example amongst the investment dealers in connection with the activities of finance companies. The investment dealers themselves have tried to work out certain rules of thumb as to what they consider to be sound practice. Some of them wanted to have agreement amongst themselves on what paper they would handle having regard for the kinds of practices that were being followed by the companies, but these are very difficult things to be sure about. Perhaps this area is one in which more work has been done in the financial community than any other.

There are others in which the corporations involved are quite unique; each one is unique; each have their own particular interest, their own particular expertise, and it is very difficult for anybody to be able to say what is sound practice and what is not. Therefore, as Mr. Humphrys has said, the whole thrust of this legislation at the beginning is to find out what companies do.

The question that you posed to Mr. Humphrys is, "Are you not in a very difficult situation if, as a result of your inspections, your gathering of information, you know that a company is in a dangerous position, and you can do nothing about it until Part II comes into play?" I think Mr. Humphrys' reply real-

ly is "I doubt that before the two years are up we would really be in a position to have a judgment ourselves as to whether they are in a dangerous position or not."

There may be an occasional exception to that, but the knowledge, certainly of the administrators within the public service and, I would suspect, in the financial community, at this stage, of what is sound practice and what is not, and what is a dangerous position and what is not, is so imperfect that we would all be very chary about passing judgments until we knew a great deal about the operations of the company.

The Chairman: Just on that point, I was wondering, before you are through, if you would address yourself to this question, if you need any regulation or power to regulate at all, except for administrative practice.

Mr. Hockin: The question of whether we would need it eventually or not is an open question, I think, Mr. Chairman. I would suspect that the performance of the financial community in trying to reach certain rules of performance which they thought justified—say, for investment dealers from agreeing to handle the paper of companies—suggests there may well be certain rules of performance and standards of behaviour, along the lines of those referred to in section 22, which will eventually become desirable.

I would think too—and this you may wish to hear from some of the companies concerned—you may well find some of the better regulated companies really feel the whole reputation of their industry would be improved and that their own ability to attract investors in a confident way would be improved if they were able to say that the operations of their type of institution were in fact regulated in some way, not merely that they reported statistics, but also that they operated within a particular pattern that had been agreed upon.

Senator Connolly (Ottawa West): Which can shift.

Mr. Hockin: Yes, which can shift, that is right. It can shift very quickly.

There was one other point I wanted to make, and that is that we are talking here about a wide range of companies. The spectrum goes from companies whose operations are perhaps of longer duration, that people are more familiar with—perhaps such as some of the finance companies—through to other types of companies that perhaps have

just sprung into existence in the last five years and whose operations may be quite different. So, when we talk about regulations, it is quite conceivable that regulations might have to distinguish between different types of companies.

At this point we are not even in a position to say what types of companies there are, what families of companies; whether there should be one set of regulations, three, five or whatever it is. It may well be there would be quite a different set would be appropriate for different types of institutions. But at this stage we are really still so ignorant about the manner in which these companies operate that we are not in a position to say what types of regulations would be necessary, or how many types.

The Chairman: You say that until your sanctions come into force in Part II, you may need regulations in order to deal with situations that require attention. What I was asking you to address yourself to was the question of the need or necessity for regulations other than simple administrative practice, for this reason, because the moment I get a certificate of registry, that is my franchise, my right to do business. The minister can recall it; he can cancel it; he can suspend it.

Senator Connolly (Ottawa West): You cannot get that for two years.

The Chairman: Under Part II.

Mr. Hockin: Yes.

The Chairman: So at that stage the minister has all the power without any regulation as to type of investment at all. I say that because he has a report, he studies the report and says, "This company must do something or it should not continue to operate." So he cancels or suspends, and he may reinstate with conditions. The conditions form the "club" that he uses for the company's operation.

With that set of provisions in the statute, why should not there be a more or less general freedom in the companies to invest? Possibly there are some more transactions, prohibited transactions, you could put in, because the prohibited transactions you have put in so far have no relation to the quality of the investment, but are only against certain classes. You could have prohibited transactions in relation to certain investments, as to the percentage for mortgage loans or individual loans, or something of that kind.

But what is the objection to freedom of investment, with control by shutting off the right of these people to operate at any time which is by suspending or cancelling their franchise?

Senator Connolly (Ottawa West): Mr. Chairman, are you not anticipating something, namely, the revocation of the certificate of registry? Part II, under which this certificate is issued, will not come into effect for two years.

The Chairman: But we are approving of it now.

Senator Connolly (Ottawa West): But the sanction cannot be applied for two years, and in that time, as both Mr. Hockin and Mr. Humphrys said, they are powerless to use Part II because they are still going to be gathering information.

I was wondering whether part of the reason for suspending Part II for two years also did not arise from the fact that no federal company, as was said at the beginning of this hearing, is getting experience of any of the difficulties that have been experienced by some provincial companies that have gone under.

The Chairman: It did not appear. There may be some in the corridors or in the wings; we do not know.

Senator Connolly (Ottawa West): Do you get any consolation from the fact the two years' suspension is warranted partly because you have not had any trouble or there has not been any trouble with federal companies?

Mr. Humphrys: We should certainly get some consolation from that. I would not like to leave the impression, if I have, that there is some imminent situation, just around the corner, we are frantically trying to take care of. That is not the case, but in the light of what has happened, it seems desirable to establish an appropriate system. In this regulation part we do not contemplate the kind of action you describe, where a ruling or an enactment of the Governor in Council would be aimed at a particular company, to try to tell it to do or not to do something. We are thinking rather of the pattern that Mr. Hockin described where a particular family or group of companies engaged in the same type of business—it may be a fairly homogeneous type of business—may have developed useful guide lines that they are complying with, and that they only wish that other companies that

are now in the field would also comply with. We could consult with that group of companies, and we felt that by having the power to make regulations we could move earlier than would be possible through legislation.

Senator Kinley: I should like to ask if there is any degree of government security in this legislation.

Mr. Humphrys: There would not be any guarantee by the Government of, or any obligation assumed by the Government for, the financial positions of companies.

Senator Kinley: Well, there is insurance, is there not, on an investment of \$20,000 in a trust company?

Mr. Humphrys: The plan of deposit insurance insures deposits in banks, trust companies and mortgage loan companies.

Senator Kinley: There is nothing like that in this legislation.

Mr. Humphrys: No, senator.

The Chairman: Mr. Humphrys, is there any type of investment that you have not reached out to cover in your definition section?

Mr. Humphrys: No, there is nothing that we deliberately left out.

Senator Connolly (Ottawa West): I wonder, Mr. Chairman, if you would repeat your question. It is an important question, and I did not hear it clearly.

The Chairman: I asked if there is any type of investment that has not been included in the list of investments that would be subject to this statute. I am referring to the enumeration in section 2.

Mr. Humphrys: It was not intended to exclude any particular class or type, Mr. Chairman.

The Chairman: I notice that you have included Government bonds, and bonds that are guaranteed by a government or a municipality. Do you see the kind of situation where it might be necessary to supervise the operations of an investment company that confines its investment to this area, or to the extent that it invested in this area?

Mr. Humphrys: Perhaps I should let Mr. Hockin from the Department of Finance answer that, Mr. Chairman. Subclause (C), is in for completeness only, since subclause (A)

talks about bonds, debentures, notes or other evidences of indebtedness of individuals or corporations. If there were a company that borrowed money and invested solely in Government bonds...

The Chairman: It would still be required to comply with the provisions of this act?

Mr. Humphrys: Yes, it would still be covered by this legislation, but it is unlikely that any such company exists.

The Chairman: And it would have to pay its share of the cost of administration. You say it is unlikely, but I do not know about that. There may be many of these industrial companies which limit their portfolios to investment in bonds.

Senator Dessureault: Mr. Humphrys, I should like to have your views on the definition of "subsidiary company". It might be a subsidiary of a provincial company or a foreign company. How can you cover such a company by this legislation?

Mr. Humphrys: This legislation might require the parent company to present a consolidated statement, including the operations of its subsidiaries, but it specifically excludes from any requirement of reporting or inspection a company that is not federally-incorporated. The section says:

For the purposes of this Act, a corporation is a subsidiary of an investment company if it is controlled, directly or indirectly, whether through another corporation or corporations or otherwise, by the investment company and, for the purposes of section 6, only if it is a corporation incorporated by or pursuant to an Act of the Parliament of Canada.

Section 6 is the section that leaves a company open to inspection. So, the investment company might be required to provide information about its subsidiaries, but this would not reach out to make a subsidiary do something if we had no jurisdiction over it.

Senator Giguère: Mr. Humphrys, do you know if there is similar legislation in existence, or in the planning stage, in some of the provinces?

Mr. Humphrys: No, I am not aware of any legislation precisely of this type, senator. I think that a number of provinces are giving consideration to this type of problem because of the failures that have occurred, but I am

not aware of anything that is actually in the proposal stage.

The Chairman: I can tell you, Mr. Humphrys, that I have made some inquiries. In Ontario it would not appear that there is anything similar to this in contemplation. They introduced a year ago a bill called the Business Corporations Bill, which is more or less unrelated to the aspect that we have in this bill. That bill has had public distribution, but has not been proceeded with. I think what they are awaiting are revisions that may be made by members of the public who are concerned. It may become law this year or in another year. Otherwise, in Ontario, although they have a committee sitting that is dealing with the various aspects of corporate law and disclosure, and such things as that, there is nothing that touches this aspect. I do not object to that, as long as it has value.

Mr. Humphrys: Ontario has greatly strengthened its authority through revision of its securities legislation.

The Chairman: Oh, yes.

Mr. Humphrys: And also some other countries have legislation of this type. For instance, in the United States they have an investment companies act which, although it is not exactly the same as this, does have a similar basic purpose.

Senator Phillips (Rigaud): I should like to direct your attention, Mr. Humphrys, to section 22 where reference is made to the fact that that power is given to make regulations pertaining to levels of paid-up capital and surplus, and ratios of outstanding debt to paid-up capital and surplus.

Mr. Humphrys: Yes.

Senator Phillips (Rigaud): Do you envisage the appropriation of authority to insist on the liquidation of outstanding indebtedness in whole or in part even if there were no default, and even though the bondholders, or the trustee representing such bondholders, raised no question?

Mr. Humphrys: I do not think that it could possibly be contemplated, senator, that regulations would be enacted that would have such a slashing effect.

Senator Phillips (Rigaud): What is meant then by the words:

...without restricting the generality of the foregoing, may make regulations per-

taining to levels of paid-up capital and surplus, ratios of outstanding debt to paid-up capital and surplus...

Let me give you the intent of my question. Suppose the paid-up capital and surplus of a corporation is \$1 million, and the outstanding indebtedness is \$500,000, and you come to the conclusion that the outstanding indebtedness is dangerously high in relation to the paid-up capital and surplus. Suppose also, that the directors of the company, the management, and the creditors of the company, have no objection to the set-up, having regard to the particular nature of the business of the company, and having regard to the length of maturity of the indebtedness. Suppose you conclude that an indebtedness of \$500,000 is too high in relation to the paid-up capital and surplus of that company. I think you have the right to determine that an outstanding indebtedness of \$500,000 is too high, and that you have the right to order that company to reduce its indebtedness by \$100,000, even though the management, the shareholders, the trustee, or the bondholders have no objection to that particular ratio in respect of that particular company. But, why do you ask for authority of such a broad nature when it is not likely that management and others in interest may not have any objection to such ratio.

That is my first question, and with your permission, Mr. Chairman, may I put a second question while I am on my feet?

The Chairman: Yes.

Senator Phillips (Rigaud): You have asked for authority to deal with regulations in respect of these subject matters, under Part II, until such time as you have studied the effect during the two years. You propose measures under Part I and then come back to Parliament and ask for particular powers which may be more restrictive in their nature and based upon your study of the subject matters.

Mr. Humphrys: On the first question, the interpretation suggested, was certainly not the interpretation sought here. The kind of regulation that would be contemplated on the ratio of debt to capital would be arrived at in a particular type of company, where, in consultation with the companies, from observing the practices followed by the better run companies, it might be determined that perhaps for that type of company in the general type of business that that company is in, it should not borrow more than say ten times its capi-

tal and surplus. If that were considered to be a good guideline accepted by the pattern of companies, then we might proceed and recommend to the Governor in Council that they enact such a regulation applicable to a defined type of company, and then they would all have to live within that.

The Chairman: If you stop at that, then you are doing something you said that was not intended, when I asked you about the regulations being general in nature, as distinct from being regulations that dealt with individual situations, or even with a group of situations in one category.

It seems to me that the first thing that we have to settle is, what is the concept of the authority that you are asking for, what do you intend it to cover? It is most general, and you are getting it so general that, within that structure, you can still have regulations that will apply only to some aspects of investments and to some companies.

Now, immediately you get that kind of freewheeling—and this is no comment on you, I am discussing the Superintendent of Insurance function here, in an objective way, because if you are any person else could give me an assurance of continuity in the office of Superintendent of Insurance of a certain gentleman whom we have known for years and respect, we might proceed a little differently, but we cannot do that, there is no way of legislating on that. Why take this broad power and then have the concept of individual applications?

Mr. Humphrys: If I have made a statement that is incorrect and misleading, I want to correct it, because we did not have in mind in this section enacting rules that would apply to specific companies only. They would be regulations of general application. But, because of the variety of companies that would be covered by this proposal, it might well be, and I think it would inevitably be, that the companies would break down into a number of classes or groups, in the light of the particular type of business that they do and the kind of guideline for financial management that might be appropriate for one type of company would not be appropriate for another.

But any regulations that were sought under this section would be of general application to a group of companies that would be of sufficient homogeneity to make a single rule useful and significant in relation to their operation.

The second question that Senator Phillips raised was, if we really feel the need for regulations, why not put them in Part II, ask for the power in Part II, and wait until Part II comes into force. It is a very valid comment, and it is a possible line of procedure. It was put in Part III to come into force when Part III came into force, since it was considered quite possible that the companies, or some groups of them, covered by this bill, might wish to have guidelines appropriate for their broad type of activity, or it might be generally in the interests of that group of companies to adopt certain rules before the expiration of the two-year period, or whatever additional period may be needed in the circumstances.

That was the reason it was put here, rather than in the other; but it is a point of view that is I think essentially a matter of judgment as to where it goes, one place or the other.

I should say, too, that while the administering authority would no doubt generate the proposal to the Governor in Council, the decision is not in the hands of an administrative official. It goes to the Governor in council and there is a far greater formality than a ruling by an appointed official.

Senator Connolly (Ottawa West): Again I apologize, because I think we are pretty much away from the main track.

The Chairman: It is pretty hard to stay on the track. It may be that I laid down a rail that was too narrow.

Senator Connolly (Ottawa West): I do not think so, but time is getting on and it may be that Mr. Humphrys will have to come back to complete the general discussion.

Before a regulation is enacted governing a group of companies in a certain area, would you contemplate consulting the industry, before you made the regulation?

Mr. Humphrys: Very much so, senator. It would be quite defeating to the purpose of the bill, and the public purpose that was served, if any administrator, or if the Governor in Council, came out with regulations that really had not had the most thorough consideration in discussion with the people who would be affected by them. This has always been the pattern that we have followed in our supervisory activities.

It has been my experience that regulation, and indeed legislation, usually follows the

good practice rather than cuts in to make massive interference with normal practices in soundly run companies.

Senator Burchill: We have been talking about preparing regulations. Would regulations cover the type of investment, or the percentage of the type of investment that a company should invest in?

Mr. Humphrys: It was not so contemplated, senator. This was not an attempt to lay down categories of investment.

The Chairman: While a lot of questions occur to one, Mr. Humphrys, maybe we should try to get back to the general guideline that we laid down as to the various sources from which information and material came as the result that we have this bill before us, and what consultation was there with those who might be affected, if any; and of course to the extent that a broad form was the result of a policy decision, we are not asking you to deal with that; we can form our own judgment. Therefore, on the genealogy—will you finish with that?

Mr. Humphrys: To get back on the track—I am not just sure what the station was that we got off at—there have been discussions from time to time with companies that would be our types or that would be covered by this bill—not in terms of specific legislative proposals but in general terms as to the point of gathering information, of possible inspection of what might be done within some reasonable legislative structure.

The main impact of this bill is, as I have emphasized, gathering information and providing for inspection, and subsequently control provisions as respects companies that are weak. In Part II the certificate of registry technique is adapted from that used in the legislation administered by the Department of Insurance already. It contemplates the possibility of conditions being imposed in the certificate and the ultimate withdrawal of a certificate as a final step. However, I should emphasize that on the basis of our experience these are steps that are very rarely taken, but it is important in any supervisory control to have a series of steps that supervisors can take to get things done when they are faced with companies that are in a bad situation, and where you may be faced with the refusal of the management to do things that need to be done to improve the situation.

I think it would be less effective to provide no intermediate stages between that of per-

suasion and that of execution, because in a supervising pattern no one wants to be faced with a situation of having to withdraw the certificate and the consequences of that, which would almost inevitably be termination of the company. This is a stage that is reached only after all possible efforts have been exhausted to save the situation, and it arises only in the most unusual circumstances.

The Chairman: On the general provisions, the principle you seem to have followed here was to have this bill cover every type of investment under your definition of "Business of investment" and then to provide a procedure for exemption.

Mr. Humphrys: Yes, Mr. Chairman.

The Chairman: In the Investment Companies Act in the United States they provide a general definition of "investment", and they provide substantially by way of exception, the exceptions which are not included. The difference is, of course, that the person under this bill which you have would have to apply for an exemption, and the minister could grant the exemption but could recall it at any time. Did you consider the question of a general definition and exceptions?

Mr. Humphrys: Yes, Mr. Chairman. The reason the bill was set up in this way is the one Mr. Hockin has described, that the variety and complexity of companies in this field is such that it was thought the best course was to try first to find out what companies are operating in this broadly defined type of business, where they are incurring the obligation of debt instruments and using a certain proportion of their funds for investment. Recognizing that in casting the definition so wide it would certainly sweep in companies where the borrowing and investing activity is incidental only to the main operation, it would be important to provide machinery for exemption when the various companies are looked at, and a judgment can be formed on that basis.

Senator Connolly (Ottawa West): When you are talking about exemption, what section are you talking about?

Mr. Humphrys: Section 3, subsection (2), on page 3 of the bill.

The Chairman: Had you thought of providing a general definition, exceptions and exemptions?

Mr. Humphrys: We found it difficult to arrive at a positive definition. We can arrive at definitions at certain classes of company, but by reason of the fact that at this stage we are not sure how many companies exist and the variety of businesses or practices they are following, we thought that as a first cast we should try to learn of all companies in this broad category, and then to follow the exemption technique for companies that are clearly not of a type that we wanted to carry through with the rest of the machinery or procedures.

The Chairman: What I have in mind—and I am sure this knowledge is in your department, or is available in the corporations branch—is that you would have companies that are industrial companies or commercial companies which would have borrowings on the security of their assets in relation to these manufacturing and commercial operations. In addition to that, it may be that some of their money which is not immediately needed for purposes of the business, or some of the money when they have a special flow of money at certain times of the year, is available, and in order to make it work in the interests of the shareholders they invest.

Let us assume the investment might temporarily exceed 25 per cent of the assets. Is that not the type of company where exception should be provided in the general definition either one way or the other, with a condition which must exist in order to bring you into the business of investment so that the borrowing is in relation to financial transactions. If the borrowing is a borrowing for construction of plant and equipment, or financing your inventory, then that should not be correlated to the investment in larger or smaller amounts as we have the separate moneys available from time to time. Should that be intended to be covered? Is that not an exception that you have to state in any event?

Mr. Humphrys: First there is the problem of tracing the dollars. You can never be sure which dollar is used for what. We attempted to deal with the problem in two ways. One was to provide the 25 per cent, to say that unless the investments were at least 25 per cent of the assets they were not in. Admittedly 25 per cent is an arbitrary figure, but it is a figure to try to mark a point where the investments become a significant part of the operation of the company as distinct from its industrial commercial activity.

Thirdly, it would provide for exceptions if it can be shown that the borrowing or investing activity is incidental only. In a company that is essentially an industrial or commercial company, if its pattern should be that from time to time, it has a flow of cash or funds that result in more than 25 per cent of its assets being in investments, such a company would likely apply for, and would almost certainly be granted, an exemption because it would be a situation where it is not essentially raising money for the purposes of investing; the investing activities are incidental only to its main purpose.

Now, there will be cases where it is a question of judgment, but I would be surprised myself if there are many cases that are so close to the particular borderline that they would give rise to difficulty as to whether an exemption should be granted or not.

The Chairman: I could enumerate, on a moment's reflection, maybe as many as half a dozen companies that are exactly of the type I am talking about, large industrial operations which have a flow of cash quite apart from the requirements of their business operations, and who have borrowings secured on the fixed assets, machinery and equipment, maybe, for those purposes; and this extra money which comes in from their operations is invested, as good management would do, from time to time. Why should it even be contemplated that these people are subject to the act and should apply for exemption? You say there is no difficulty in getting it, but you never know that when you apply.

Mr. Humphrys: You cannot describe the companies in a clear category. There is a great variety of them, and one of the difficulties in this kind of field is we know that companies change their direction. They may start off as an industrial company; the pattern may change and, ultimately, they wind up as purely an investment type. They move back and forth and, consequently, we sought this particular power, at least initially, so we could start in by having a look at them and be in a better position to judge and recommend the kind of definition the Chairman is describing.

Mr. Hockin: Mr. Chairman, might I comment briefly on this? I think there is no suggestion that the intent of the bill is to catch companies whose business, on a regular basis, in their normal operations, is not with investing, but the investment really comes about incident to their flow of cash which

they may have at times for the purpose of their regular business, be it industrial or commercial. The intent of the exclusions which Mr. Humphrys has described, and as he has said, is to take that company out of the ambit of the act.

The Chairman: What intent? Whose intent?

Mr. Hockin: It is the intent of the drafters of the legislation to make sure they are not caught.

The Chairman: Is not what we are governed by the bill as it passes, what it says? Under the definition, these companies of the character I have described would be investment companies.

Mr. Humphrys: They would only be within the ambit of the bill if their investments were over 25 per cent of their assets, and if it could not be shown the investments were only incidental. There would be a range of categories. At some point the investing activity becomes a major activity of the company. What that point is, is a matter of opinion and judgment. It has been suggested that once it passes 25 per cent, then the company, if it wishes to be exempt, should take the initiative to show that notwithstanding the fact that more than 25 per cent of their assets are investments, their investment activity is still incidental.

The Chairman: Why, if they have not borrowed any money in relation to these financial transactions?

Mr. Humphrys: I would have difficulty in determining whether they had borrowed money in relation to those transactions or not. If they had debt outstanding, some dollars flow into the corporate enterprise to be used, and whether they are used for one purpose or another, I do not know whether it could be established.

The Chairman: Let us stay on general, substantial things. Say you have an industrial company that is proposing to construct a new plant, and it borrows money on the security of its fixed assets, equipment and machinery, say, for that purpose, and the provisions for advancing the money coincide with progress on the construction, so you know very well where the money has been used; or in the case of other companies by studying the company's growth and development, you can see where borrowing has been utilized on the fixed assets of the company, and their

earnings are good and they have built up a surplus and they are not paying it all to the shareholders, but they must, as good managers, make it earn money, so they invest it. Those things are not difficult to determine, and what I say is, why should they be brought in, for one instant, in the definition of an "investment company", if their borrowing, which they must have in order to meet the definition of "business of investment", has no relationship to the financial transaction?

Senator Connolly (Ottawa West): Even if it is more than 25 per cent.

The Chairman: Oh yes.

Senator Connolly (Ottawa West): If you put the 25 per cent provision in.

The Chairman: The test is 25 per cent or more.

Senator Connolly (Ottawa West): Where would you put the 25 per cent limitation in if you did put it in—in section 3(2)(a)?

Mr. Humphrys: It is in now, Senator Connolly, in paragraph (f) of subsection 1 of section 2. That is on page 2. It states:

(f) "investment company" means a company... (ii) that carries on the business of investment and at least twenty-five per cent of the assets are...

invested.

The Chairman: That gets you back to the old question, the difference between proceeds of borrowing and the use of 25 per cent or more of the assets of the company. They may be two distinct things. The proceeds of borrowing on bonds, etcetera, may be substantially less than the assets of the company. That may only be part of the assets of the company and may be in the form of fixed assets, such as equipment and machinery.

Mr. Humphrys: The general approach or philosophy here was based, again, on the idea of first trying to learn about the companies; then adopting the kind of definition or distinction or classification the Chairman has described.

The Chairman: I notice that in the Investment Companies Act in the United States they follow the method of having a general description of investment companies. Then they deal with both exceptions and exemptions. We might not have just that situation they are encompassing, but they have a

general definition. I was wondering whether you would care to comment on it. Their general definition of an investment company is:

Any issuer which has or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting or trading in securities.

That is pretty general.

Senator Burchill: Why not leave it at that?

The Chairman: And then put in your exceptions and the right to qualify for an exemption?

Mr. Humphrys: It would be an approach to propose this type of legislation on a specifically defined class of companies. It would then leave us in a position where we would know of the companies that are in this broad class. We are not now in a position to say to the Government, or to a committee such as this, what kind of definition would cover the companies that, in the public interest, should be subject to a piece of legislation such as this. That is why we have adopted this rather broad beginning of first saying, "Well, let us first cast a broad definition and grant exemptions."

The definition that the chairman has read is in the investment companies act of the United States, which was enacted in 1940. I believe with the kind of problem we are facing now, with the developing complexity of companies that are in the financial intermediary field in one fashion or another, is quite different from what it was then. We feel that it is important that there be some source within the Public Service where knowledge of this broad category of companies can be put together, at least in an initial way.

I recognize the point that the chairman makes, that it is a bit repugnant to make this apply to a company that pretty obviously would be granted an exemption, but it seemed that the difficulty there, or the inconvenience that some companies would be put to, would not be of too serious a proportion, and it would put us in a much better position to make useful recommendations as to more specific definitions, and to answer the kind of question that the chairman has put to us, namely, "Would such a definition be sufficient or appropriate to deal with the kind of company that the public interest suggests?" This

is really the reason and the rationale of this approach. Whether anybody agrees with it or not is another matter.

The Chairman: Yes, that is a decision we have to make at some stage. It is clear that investment practices and the kind of investment, have changed materially over the years. I agree with that. But, an investment is still an investment, and while the form and character of it may change you have drawn your terms of investment in such broad terms that when asked if you had left out anything you said, with a twinkle in your eye, "Not with knowledge". So, you have drawn it in a way to cover what may be today's type of investment. I am not criticizing that, although I am wondering why you bring in Government bonds. I am opposing it from the other point of view of bringing in on the basis of borrowing companies that do not use the borrowing for any financial purposes. You use that as satisfying the condition that if they have investment of 25 per cent or more than they are subject to the provisions of this act, unless they can beg off on an exemption. I do not think they should be put in the position of begging off. I think it should be one of the exemptions. They should not be brought in.

There is the point that they may shift back and forth, and I think Mr. Hockin or Mr. Humphrys said—or perhaps it was both of them...

Senator Connolly (Ottawa West): Would it be fair to ask you at this point, Mr. Chairman, how you would exclude them?

The Chairman: Yes, I have a draft of a form of exemption which, I can tell you quite frankly, was proposed in a letter written to the chairman of this committee by Alcan Limited, which has a range of operations and which borrows and lends money in areas that are what they call non-financial. They consider that those are real areas that can be determined by examination, and that should be excepted.

Senator Connolly (Ottawa West): I had no company in mind when I asked the question.

The Chairman: Well, there are other companies that we have incorporated by special act over the last number of years in which there is a consortium of banks and industrial businesses. They have borrowed money on the security of bonds, et cetera, and they have loaned that money. These are not operations of the character that seem to me should

be included in the business of investment for the purposes of this bill.

Senator Connolly (Ottawa West): Would it help if the 25 per cent level were raised?

The Chairman: I do not think so.

Mr. Humphrys: I think it would definitely indicate a change in the emphasis of the activities of the company.

The Chairman: If they had 50 per cent—yes, I suppose it would.

Mr. Humphrys: It would indicate that the business of a company is shifting.

The Chairman: Well, would it?

Mr. Humphrys: Well, if you get to 100 per cent then you have obviously reached...

The Chairman: There are some companies that have a variety of businesses, and it is the sum total of them in respect to which they have to account for tax purposes. They may have a variety of businesses. Some of these investments may be in subsidiary companies that are carrying on some phase of their operations, and yet as between the subsidiary and the parent that would be an investment.

Mr. Humphrys: Yes, Mr. Chairman.

Senator Macnaughton: Does this mean that if I have short term money I cannot invest it quickly on a good security without first obtaining consent?

The Chairman: This is what it looks like, if you have been the borrower.

Senator Macnaughton: But perhaps the opportunity has gone.

The Chairman: If you have been a borrower and 25 per cent or more of your business—there are some industrial companies which will lend perhaps not 25 per cent but close to it over a weekend. It is short term money.

Senator Macnaughton: Is it physically possible to get consent within 25 minutes, say, by means of a long distance telephone call to the Superintendent of Insurance? If it is not, then my opportunity has gone.

Mr. Hockin: May I say a word here, Mr. Chairman?

The Chairman: Yes.

Mr. Hockin: As I said earlier, the intent is not to catch a company that happens to have

that kind of money for a short time. there are some companies that have quite marked seasonal fluctuations in their cash positions. I do not think the intent is to catch those. It may be that we can work out some sort of wording that would catch the idea of "regularly employed" that would answer this particular question.

But, I would also like to raise the question with you about the types of companies which I think you had in mind, Mr. Chairman—those companies which are industrial companies. Let us take as an example a company that began as a manufacturer of widgets at a time when the widget manufacturing business was very good. They gradually acquired some financial reserves which they thought they would invest. Their first thought would be to invest in something ancillary. They may go down to buy a source of supply of some of their raw material, or to buy a retail outlet, or what have you. There is a kind of channel there of corporate interest which—

The Chairman: A vertical flow of operations.

Mr. Hockin: That is right. But, you may also get into companies which I guess are called now the big conglomerates which are not involved in just that sort of thing. They say: "Let us buy something that has nothing to do with widgets", and they buy something that is really involved in the manufacture of whosits. They might buy, for instance, a hotel chain in the Caribbean. If that happens you can get a whole family of companies.

Are the people who are buying the bonds of the parent widget company buying the expertise of the management—the demonstrated expertise in manufacturing widgets—or are they really putting themselves in the position of entrusting their money to people who are investing in a wide variety of things? What is the difference in the function of that company from that of a company that declares itself to be in the business of investing in good opportunities wherever they occur?

The Chairman: Let me stop you right there. If the company does invest in conglomerates, or various unrelated types of manufacturing operations; if their investment is of a nature which puts them in effective control of those companies, then what the parent company is really doing is carrying on an industrial operation, but it has used this vehicle of acquiring

effective control to do it. The question is whether that should come within this definition of investment.

My concept of investment, not as a matter of law but just as the concept that the public might have, does suggest that you are buying into something for income or for capital gains and therefore you are relying upon the ability of the people whose shares you buy, that their view is that it is a good operation. If it is a financial operation, there is no question about it being the business of this house. If it is basically a commercial or industrial operation, if we want to look at it—and again, because I said I do not agree with this or that, Mr. Humphrys, I am not prejudging or making a decision as to what we eventually will do.

Senator Molson: There is also a degree to which any company invests. If a company goes out and gets three or five or 11 per cent of an investment company, it is making an investment, but a lot of those companies you are speaking of, whose main objective is industrial or manufacturing, as a rule would tend to invest in a very, very substantial minority, or probably more often a majority position in those companies. And if they have a majority position, where they have responsibility then, their primary objective is manufacturing and is not financial. If it is manufacturing, it is a widget company we are discussing, unless it is a company in the financial sector.

The Chairman: I am not sure what a widget is.

Senator Molson: I think they sell very well, Mr. Chairman, if the price is right.

Mr. Humphrys: This raises quite an important point on the holding company with wholly-owned, or controlled subsidiaries.

The Chairman: I used the words "effective control" because that could be less than 50 per cent.

Mr. Humphrys: This proposal would treat a holding company, if its assets were shares of subsidiaries, as an investment company. It is recognized that the definition covers such a company.

The important point is that, with the growth of the holding company technique the conglomerates under holding companies, you may have a wide variety of companies under it—is there a public policy to be served by

getting some information on that company and on its holdings in relation to its debt obligations?

Now, this contemplates that it is important, that there is a public interest to be served by getting information on such holding companies, even if the family that they have are a series of manufacturing or industrial companies—and financial enterprises as well.

The Chairman: That may be an interesting calculation, but why do you say the public, as such? They might be interested in getting it, but until you justify that they should get it—

Mr. Humphrys: I do not say that the public should get it, but I say, is it be in the public interest that that information should be gathered by public officials in this country and be subject to this kind of analysis.

Views may differ. Some views may be that if it is not merely investment it should be excluded; other views may be that because of the rapid growth of holding companies and the associated conglomerates they should be included, and that the body which created the company should have a flow of information about it and what it is doing. I wanted to open up that particular issue, because it is an important one.

Senator Molson: Why do we pick out conglomerates? It seems to me that under this heading you are going to have a great many of the operating companies of Canada—companies who have borrowed some money and who have used that money to buy shares, and so on. For example, I think of the big breweries, and of the investment companies.

The Chairman: The word “conglomerates” came in, but in the examples that I was using I was thinking of an infinite variety of industrial and commercial operations.

Senator Molson: But it goes wider than that. It seems to cover practically every company in Canada, which will be sending in these nice returns to you. I think you will have to get more staff and I wonder what the Glassco Commission Report says about this?

The Chairman: On the general line of discussion which we started out on this morning, Mr. Humphrys, and all the factors that take part in the creation of this thing, or your relationalization of it, are there some aspects that we have left? There are one or two I think of and it would take only a few minutes, but are there any that you think of?

Mr. Humphrys: As respects the general background, I think that we have covered it, without going into details on the bill.

The only other point I would like to emphasize is that, at this stage, it is essentially a reporting and inspection stage, with the exception of clause 8, which deals with certain prohibited loans and investments. That is perhaps a question that should be discussed in terms of the clause.

The Chairman: We have to look at Part II, because when passing the bill we pass Part II as well. The only thought I have there—and I will try to make it general—is that you have provided very elaborate machinery for the minister, when he made his decision on the basis of your report. You have provided that an interim receiver may be put in right away; you have provided for the proceedings in regard to the winding up of a company under the Winding-Up Act; you have provided for direct intervention in any bankruptcy proceedings which may be launched; so you have provided for all these proceedings which, in their scope, exceed the remedies and the authorities that are available to the minister, in relation to other companies under other acts, the Loan Companies Act and the Trust Companies Act and the Canadian and British Insurance Companies Act. Then you go on, and in clause 26 you realize you have a problem, because you provide that:

Nothing in this Act affects any right or remedy of a person who lends money to a company to which this Act applies on the security of bonds, debentures, notes or other evidence of indebtedness of the company.

I expressed a liking for the provisions in the Trust Companies Act and the Loan Companies Act that is, the minister, when this situation appears and the minister is satisfied that it does, the certificate of the company is suspended momentarily and it must cease to do business, but almost incidentally the minister may issue a certificate permitting it to carry on, with conditions. It is recognized in the Trust Companies Act and in the Loan Companies Act that there is a good purpose to be served by that. The conditions may stipulate a period of one, two or three years to remedy the situation. That time may be allowed, on the representations of the company, so that it may negotiate a sale on better terms than they would get in bankruptcy proceedings or winding up.

Why all these alternative or cumulative provisions for bringing disaster, and terminating the existence of the company—because, first, if you have secured indebtedness, this happening on which the minister purports to act, is in any trustee that I know of, the event of default, which would trigger the trustee into action, and he could go into possession, or an interim receiver could go in. Then the interim receiver who is in there under the trust deed is in the preferred position, and the only way you could move him out of it would be by paying him off. I am not satisfied at that stage the government would want to use government funds to move in and push out of the way the secured creditors with 100 cents in the dollar.

It seems that we have gone too far out and provided too elaborate machinery to deal with this situation, where really all you want to do is to stop these people from carrying on business and incurring more losses, but you are not going to shut them off from operating under conditions, because that is in the interests of the creditors, it is in the interests of the shareholders and therefore in the interest of the public. This is something I would like you to look at, and if you have any comments I should like to hear them.

Mr. Humphrys: Your points are well taken, Mr. Chairman. It was intended in this bill, and it is intended in the provisions of section 15, to make available exactly the same procedures as are available under the acts mentioned. After a special report is made by the superintendent to the minister, where there is trouble the minister can hear the company and he then has a series of courses open to him. He can prescribe a period within which the company should improve its financial conditions and affairs. He can withdraw the certificate and issue a conditional certificate for such terms and subject to such conditions as he considers appropriate, which is something to which you referred, or his final power is to withdraw the certificate.

The idea is to allow a series of steps, depending upon the stability of the situation, depending upon the progress being made by the management in taking action necessary to protect the ability of the company to discharge its obligations. The provisions that are new here and are not found in the other legislation, permitting the minister to apply to a court for the appointment of a receiver or to apply for a winding up order, are in

here as a consequence of experience we have had in situations where you impose conditions and tell the company to do something or not to do something and it does not comply.

What then do you do? If you then take the next step and withdraw the certificate, that puts them out of business. The circumstances may be such that under the trust deed there is certain machinery set up so that the minister does not have to take this action, in which case he certainly would not. The idea of permitting the minister to apply to a court for the appointment of an interim receiver is to have an additional supervisory tool which makes it possible to conserve the assets or get certain things done if you are faced with the situation where the management will not or cannot take reasonable steps to conserve the assets and restore the affairs.

We have been faced with a situation such as this and we believe that some power such as this is necessary at the initiative of the supervising authority. Certainly it would make no sense to use this kind of power in a dispute with receivers who might be appointed under other circumstances. In any event it is only a power granted to the minister to approach a court. The court is surely in a position to judge whether the receiver should be appointed at the instigation of the minister, or the representations of other interested parties should be heard as to whether the receiver should be appointed at all. This is only proposed as a right of the minister to approach the court.

Senator Connolly (Ottawa West): You say it is a safety valve?

Mr. Humphrys: It is an interim stage.

The Chairman: Under the Trust Companies Act and the Loan Companies Act if the company does nothing to improve its position, even though it has been granted a conditional certificate, the minister withdraws the certificate and the company is then solvent.

Mr. Humphrys: That is right and I think that is a defect.

The Chairman: Why?

Mr. Humphrys: Because in those institutions now, when they are so deeply involved in a deposit-taking business, one of the vital things you have to look at is the confidence of depositors. You might get into a situation where some action is taken that gives rise to

alarm on the part of the depositors and you might have a run and collapse of the company, at a time when if you could step in through a receiver and get certain things done the company could be restored and preserved.

The Chairman: The appointment of an interim receiver rings the alarm bell too, does it not?

Mr. Humphrys: But not as much as closing the company, and withdrawing the certificate closes the company.

The Chairman: Except that the company requires action at once, and if you say the company is insolvent it triggers the trustee under any secured issues.

Mr. Humphrys: In those cases it is far better to be able to have an intermediate position if necessary, in order to initiate a possible sale or takeover of a going institution as compared with that of a defunct institution, which is a consequence of closing.

The Chairman: I would think the interim receivership power, if you are going to provide anything as a safety valve, is all that is necessary. The thing will resolve itself then. Then I would shut out any proceedings under the Winding Up Act, and certainly under the Bankruptcy Act, because you know what happens when people apply under the Bankruptcy Act. There is quite a distribution of the moneys of the company, which go in directions that are not rewarding to the shareholders.

Mr. Humphrys: I think it was for that reason that they provided the power of the minister to intervene in such proceedings, since if action were taken it might be in the interests of the general body of creditors to have some different disposal of the bankruptcy petition, or the appointment of some other trustee in bankruptcy. It was thought that the minister should have the right at least to intervene because of his responsibility for the company.

The Chairman: I would think to intervene only to stop the bankruptcy proceedings.

Mr. Humphrys: Well, to intervene to place before the court considerations that the minister might think are desirable the court should consider in acting on the petitions.

The Chairman: An interim receiver would do that.

Mr. Humphrys: If an interim receiver had been appointed.

The Chairman: That is why I say that if you are going to provide any of these things in the expectation there may be a necessity for it in one of these cases, appointing an interim receiver would appear to be the most helpful and hopeful way of doing it.

Mr. Humphrys: We would think this would grant the best opportunity for salvaging the situation.

The Chairman: And simply prohibit or stay any proceedings.

Senator Connolly (Ottawa West): If the certificate is withdrawn and an interim receiver is appointed, is there any possibility of his conducting the affairs of the company under a conditional certificate?

Mr. Humphrys: It is provided that the interim receiver would have the power to take conservatory measures and dispose of property that might depreciate rapidly

but the interim receiver shall not unduly interfere with the company in the carrying on of its business except as may be necessary for such conservatory purposes or to comply with an order of the court.

Senator Connolly (Ottawa West): Does not the appointment of the interim receiver imply the certificate has been withdrawn?

The Chairman: Yes.

The Humphrys: No, at any time after a special report has been made the minister could apply for the appointment of an interim receiver even though the certificate had not been withdrawn. The idea would be that when trouble comes and the Superintendent has had to report, circumstances may exist where the company can continue to operate, but the management maybe, in effect, have abandoned the company or refused to act, and this provides the machinery for keeping the company in operation.

The Chairman: The way the bill takes care of that is, I suggest, if an interim receiver is appointed the certificate may be withdrawn and a conditional one issued, and the condition might be that there is an interim receiver.

Senator Connolly (Ottawa West): Yes.

The Chairman: It seems to me we have taken a fair run at this this morning, in an

attempt to rationalize the situation in relation to the form of the bill, and I would suggest that we adjourn until our next regular meeting day, next Wednesday. In the meantime the transcript will be available.

It may be that Mr. Humphrys and Mr. Hockin, who are set to go to another appointment, will take to heart some of the discussion that has taken place and realize there are areas in which we might usefully make some changes. If so, they do not have to commit themselves next time, but we will either, or maybe both, go into a consideration of the bill and/or hear public representations, because we will notify these various people that they are entitled to attend the next meeting, if they wish, and make their submissions.

Senator Connolly (Ottawa West): I was wondering whether it was contemplated they should come back. It seems to me that section 8, on prohibited loans and investments, is one

of the general application. Perhaps we would like to have some discussion about some of the features of that section.

The Chairman: We had some today. You mean section 8?

Senator Connolly (Ottawa West): Yes. Has it been mentioned about Mr. Humphrys returning?

The Chairman: Let us aim at this. We will have the particular discussion on this clause next time and, depending on whether there are representations to be made by outsiders or the public, if there are, we will go on hearing them. If they are not available to come in next time, we can go on looking at the sections and see what we think about them.

The committee adjourned.



Government
Publications

First Session—Twenty-eighth Parliament
1968-69

THE SENATE OF CANADA
PROCEEDINGS
OF THE
SENATE COMMITTEE
ON
BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 15

WEDNESDAY, FEBRUARY 5th, 1969

Second Proceedings on Bill S-17,

intituled:

"An Act respecting Investment Companies".

WITNESSES:

Department of Insurance: R. Humphrys, Superintendent.

Department of Finance: A. B. Hockin, Assistant Deputy Minister.

THE QUEEN'S PRINTER, OTTAWA, 1969

THE SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Lang
Aseltine	Desruisseaux	Leonard
Beaubien (<i>Bedford</i>)	Gélinas	Macnaughton
Benidickson	Giguère	Molson
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Inman	Welch
Connolly (<i>Ottawa West</i>)	Isnor	White
Cook	Kinley	Willis—(30)

Ex officio members: Flynn and Martin

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, January 22nd, 1969:

"Pursuant to Order, the Senate resumed the debate on the motion of the Honourable Senator Desruisseaux, seconded by the Honourable Senator Sparrow, for second reading of the Bill S-17, intituled: "An Act respecting Investment Companies".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Desruisseaux moved, seconded by the Honourable Senator Sparrow, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, February 5th, 1969.

(16)

At 11.40 a.m. this day the Senate Committee on Banking, Trade and Commerce resumed consideration of Bill S-17, "An Act respecting Investment Companies", with particular reference to clause 8.

Present: The Honourable Senators Hayden (*Chairman*), Blois, Burchill, Carter, Connolly (*Ottawa West*), Desruisseaux, Gélinas, Macnaughton and Molson—(9).

Present but not of the Committee: The Honourable Senator Phillips (*Rigaud*)—(1).

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The following witnesses were heard:

DEPARTMENT OF INSURANCE:

R. Humphrys, Superintendent.

DEPARTMENT OF FINANCE:

A. B. Hockin, Assistant Deputy Minister.

At 12.40 p.m. the Committee adjourned consideration of the said Bill until Wednesday, February 12th, 1969, at 9.30 a.m.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

THE SENATE

THE STANDING COMMITTEE ON BANKING, TRADE AND COMMERCE

EVIDENCE

Ottawa, Wednesday, February 5, 1969

The Standing Committee on Banking, Trade and Commerce, to which was referred Bill S-17, respecting investment companies, met this day at 11.20 a.m. to give further consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, when we adjourned last Wednesday we were considering what we might deal with when we resumed, and Mr. Humphrys suggested he would like to deal more particularly with section 8 of the bill, and I would expect that now he has some rationalization of that to give the committee. Is that right, Mr. Humphrys?

Mr. R. Humphrys, Superintendent of Insurance: Yes, Mr. Chairman.

Senator Molson: Before we proceed, Mr. Chairman, I should like to correct the record of last Wednesday's meeting.

The Chairman: Yes, at what page?

Senator Molson: At page 186 I am reported as saying:

For example...
and that is the word here
...I think of the big breweries, and of the investment companies.

I am sure that what I said was something like:

For example, the big breweries would be considered investment companies under this legislation.

The Chairman: You have called this to the attention of the committee, and *Hansard* has noted it.

Senator Carier: May I ask a question, Mr. Chairman?

The Chairman: Yes.

Senator Carier: I think at the last meeting of the committee we were discussing the question of regulations which would affect all varieties of companies that come within the ambit of this legislation, regardless of whether they merited it or not. In reply to a question, Mr. Humphrys said in framing those regulations they would take into account the good companies.

I think that, before that, I had pointed out that what separated the good companies from the bad was really the judgment exercised in making decisions. The successful ones were able to make good managerial judgments; the unsuccessful ones, that we are trying to protect the public against, got into their predicament largely through poor managerial decisions.

I think Mr. Humphrys replied to the point I raised by saying that the regulations when framed would embody the practices made by the successful companies. I did not find his answer entirely satisfactory. It was good as far as it went, but it occurred to me that this was a special kind of company.

We are talking about a company that borrows money from the public for the purpose of reinvesting it in other enterprises, and we want to protect the public from people who make bad investment at the expense of the public, in such a way that the public will be the loser. It occurs to me that when you boil it down to the matter of managerial judgment, there are two elements. One element is the selectivity. A manager has money to invest and he has a wide variety of options upon him, and of those options he will select one or two but he will select good options or he may even be able to have his options decided by computer, so that he can compare the value of each option and select the one which the computer shows to be the more favourable.

But, in addition to the judgment of the selection, the element of the judgment of

selection, there is an element of judgment which refers to the timing in which he makes his selection or puts his selection into action. After contemplating Mr. Humphry's point, I could not understand how he comes to put it. My problem was how one would frame a regulation and embody those two factors of judgment.

The Chairman: There is a third factor, the timing of the sale.

Mr. Humphrys: Mr. Chairman, I think I can comment on that point. Certainly, the point is well taken, that you cannot legislate business wisdom or investment wisdom, nor can you create that by a set of regulations. If it is impossible to determine in any particular class of companies a set of rules or guidelines that would distinguish at least in a broad way the difference between wise and imprudent managing, borrowing, investing, and unwise—then regulations could play no part.

But we contemplated that, in this group, in the large number of companies that would be swept within this definition, that there would be companies of many different types. We contemplated, too, that they would break down into groups of similar activity. We know already, in looking at the activities of companies of certain types, that they do follow general guidelines in some aspects of their operation. For example, they may have certain guidelines as to the relationship between secured debt and unsecured debt, or they may have relationships between their capital, the amount of their capital and the amount of debt that they assume.

They may have rules or guidelines concerning the relationship of the maturities of their investments on the one hand, and their debt obligations on the other. So there are rules or guidelines that do exist in certain types of enterprises that can usefully be adopted by all companies that are operating in that field.

I think we can observe, too, in some fields where lenders, banks, or investment dealers will themselves have general guidelines or checkpoints in mind, in considering whether or not to underwrite the issuance of securities or to lend money to a particular class of companies. These are the kind of rules or guidelines that would be embodied in regulations, should it appear to be possible and desirable to adopt such rules. But I agree with you completely that it would be quite a

hopeless task to try through legislation or regulation to work in the field of the type of investment judgment that you have described. Does that answer make the point?

The Chairman: I would add this on the point. It is a question, from what you are saying, whether you are going to practice preventive law or regulations, that prevent certain types of investment, or whether your concept of protection is that you determine from time to time the state of a company in the exercise of its judgment and the investments it has, and then you ring the bell if the position has got out of line with sound practices and if there is a deficit in assets as against liabilities. You ring the bell—if you think they are going in that direction.

In this act, it seems to me you may be trying to cover all aspects, that is, to cover the aspect of guidelines for investment and therefore there must necessarily be some guideline as to when you sell, and the progress a company is making from time to time.

I thought there was inherent in the word "protection" more the sense of watching the development of a company, not what it may invest in but watching the results, and if you see the results, then to ring the bell? Where does the scheme fit in that?

Mr. Humphrys: We have to have a bell to ring, but we would hope that the events or the problems could be solved or the difficulties corrected before it is necessary to ring the bell, as you say, Mr. Chairman, and to resort to the specific sanctions that are specified in this bill.

The Chairman: Then you mean, by laying down guidelines for investment?

Mr. Humphrys: I would not term it as laying down guidelines for investment, since we do not propose in here, nor by way of regulation, to classify or prescribe authorized classes of investments. But the kind of thought we had in mind was the type that I tried to describe a moment ago, being rules concerning the relationship of maturities which are relevant for liquidity purposes, rules concerning the capital margin in relation to the volume of loans. We have those rules in some other legislation. For example, in the Trust Companies Act there is a rule saying that the company cannot assume liabilities in excess of fifteen times its capital

and surplus. This is set up as a broad guideline, saying that in Parliament's judgment no company should operate with a capital surplus margin of less than $6\frac{1}{4}$ per cent of the assets. There are also rules about liquidity, requiring certain liquidity reserves. These are the types of thing, and the only types of thing, that I think could be dealt with by regulation.

Senator Molson: I am rather puzzled, because as I understand it my impression is that most people understand the purpose of this legislation is to prevent the kind of debacle we had with the Atlantic and Prudential finance companies, which would not have been caught had we had it because they were both provincial, if I am not mistaken. The rule that Mr. Humphrys is discussing would be suitable for these sorts of situations.

To return to the thing that has been hammered quite often, namely the definition of the kind of company which will get into this, these rules do not mean very much at all. What has concerned me, and I think nearly everybody, is the fact that as it is defined today almost every big company, or a very large number of the big companies which operate as holding companies and so on, will be designated investment companies and go through all this exercise, when, with respect, I do not think the judgment of the department is any better than that of the board of directors in their own boardroom. Although with insurance companies, trust companies and loan companies I think the department has done a magnificent job, handles the matter well and is extremely competent, once you come to legislation encompassing most of the big companies in Canada—and we have heard of Alcan and Massey Ferguson, great big colossal companies—I do not think their place is in reporting to the department in the way suggested. I do not think these definitions can tell the boards of directors of those companies how to protect their shareholders' interests.

The Chairman: I think all Mr. Humphrys was doing was relating Senator Carter's question to the scope of the bill. He was not at that moment dealing with the scope of the bill as such. We talked about that last time and said a lot of things about it, and I fancy that before we are through we shall have a lot more to say about it. Mr. Humphrys was, in the context, answering Senator Carter's

question, and inferentially, of course, what he said about the kind of regulations which might be in force would be applied to anything to which the act applies.

Mr. Humphrys: Yes, with this qualification. We know the breadth of this definition would cover a great variety of companies, and we did not for a moment think that any one set of regulations, if any, would be suitable or could reasonably be made applicable to all the types of companies that would be covered. We thought that when we begin to find out the variety of companies that are under this, or could be under it, what they are doing, and are in a position to begin to classify them in some logical or sensible way, then in consultation with the better run companies in each of those classifications it might be possible, and indeed desirable, to establish rules and guidelines, not from the point of view of a government department or government officials suggesting that their wisdom is greater than that of the people running the company, but because it might be desirable, in consultation with people in the industry who know the industry and want themselves to be protected from the dangerous and unfavourable activities of other companies in the same field, who through bad actions damage not only the public but also the better companies in the field, to have these rules, when the companies themselves would consider circumstances existed in which they might be desirable. This is the general type of rationale of it.

Senator Connolly (Ottawa West): Let me just follow up Senator Molson's point. We have had a great many briefs sent to us, and I suppose in due time many of those who have circulated these documents to the committee will appear here. I thought Senator Molson's point was made very effectively in two submissions that I have been able to read, one from Massey Ferguson Limited and the other from Dominion Textile Company Limited. I would hope that when we come to section 8 of the bill, perhaps of our own motion we might at least be able to discuss Senator Molson's point with Mr. Humphrys and relate it to the section itself.

The Chairman: Mr. Humphrys indicated at the close of the last sitting that he would like to elaborate on section 8. We had some discussion, and I think I was provocative and put forward some suggestion about the situa-

tion in which they might find themselves under section 8 for a period of two years when they had not real sanction. I gather this is one aspect that Mr. Humphrys will deal with. I think that when these people come and present their briefs they will address themselves to these sections, and I expect Mr. Humphrys will be here.

When you refer to representations, I can tell you that even since our last meeting I have had a letter from the Industrial Acceptance Corporation, who indicate that they wish to appear and submit a brief. They say it will not be possible for them to appear before February 26. I am presuming, unless the committee says otherwise, that it would certainly still be working on this bill on February 26. Then the Canadian Pacific Investments Limited and Canadian Pacific Securities Limited have written saying they propose to make a joint submission in relation to this bill; they say the brief is being prepared and will come forward as soon as possible. I do not know whether I have already indicated this, but there is a letter from the Federated Council of Sales Finance Companies who wish to make a submission. The thing is therefore reaching out and attracting the interest of a great many different sorts of companies.

Senator Connolly (Ottawa West): Have Massey Ferguson and Dominion Textile asked to be heard?

The Chairman: What they said was that their more detailed and specific objections to the provisions of the bill are being made in the submission to the committee by a group of Canadian corporations concerned with investment and they concur in their comments. We have that brief.

Senator Connolly (Ottawa West): Those who prepared that brief will presumably come?

The Chairman: Yes.

Senator Connolly (Ottawa West): If it will not interfere with the proper conduct of this morning's proceedings, I wonder if I could ask Mr. Humphrys at this stage a more general question with reference to one particular industry that I dealt with in the speech I made to the Senate on January 22.

The Chairman: Is your question on clause 8? I do not like to hold this down.

Senator Connolly (Ottawa West): No, it is not.

The Chairman: Could we finish up with Mr. Humphrys' preliminary remarks so as to keep a continuity? Then we could go back into the general review.

Senator Connolly (Ottawa West): Certainly, so long as I have an opportunity to talk about this point.

The Chairman: At that stage you will be right there.

Mr. Humphrys: Mr. Chairman, honourable senators, clause 8 of the bill is an important one from two aspects. First, it is the only provision of the bill that would have an immediately regulatory effect. Otherwise, Part I requires companies to report and provide the machinery for examination. But that is all that it does. Clause 8, however, imposes certain limitations on investments and loans.

The second reason that it is important is that it attempts to deal with a class of cases within which have been found the reasons for a number of financial difficulties that have occurred in recent years. Essentially, the rationale behind this clause is to attempt to eliminate investments and loans where there is a conflict of interest. That is, the purpose is to avoid a conflict of interest on the part of those who are making the investment decisions or who are in a position to exert a significant influence on those decisions. The conflict of interest that this aims at is their interest in their capacity in making those decisions on the one hand, and their interest in companies in which the investment company may invest funds or to which it may lend its funds.

What has been attempted here is, first, to classify or describe a group who either have the responsibility for making investment decisions, or, can be presumed to have a significant influence on those decisions. This group has been described as consisting of officers and directors, their immediate families and any major shareholder, or, as the bill says, any substantial shareholder. Substantial shareholder is defined as the shareholder who owns 10 per cent or more of the voting stock. This is a directly or indirectly beneficial owner of 10 per cent or more than 10 per cent of the voting stock.

This is the group of people who have been defined in the bill and, in the carrying out of this concept, they are presumed to have some influence on the investment decisions of the investment company.

The rule, then, says that the investment company cannot make loans to any of those people or make investments in the shares or obligations of any corporation that is found within that group on the one hand, and, on the other, the investment company cannot lend to or make investments in any other corporation, if any person in that defined group has a significant interest in this other corporation, and significant interest is defined as owning, that is, having the beneficial ownership, directly or indirectly, of more than 10 per cent of the stock of this other corporation.

The provision goes on to provide some exemptions to look after cases where it can be established to the satisfaction of the Minister that where an investment would be barred by reason of the significant interest on the part of a major shareholder, the prohibition can be lifted, if it can be shown that the major shareholder does not, in fact, take an active part in the management of the investment company, and if the investment does not involve his interest in a significant way.

That, Mr. Chairman, is the line of reasoning that lies behind this provision.

The Chairman: May I add this, Mr. Humphrys, that in opening I made some reference to some statements that I had made to you the last day as a sort of preface to your presentation on section 8. I was wrong in mentioning section 8. I had addressed myself to section 5, subsection (6), with the few suggestions that I made. I just want the record to be straight.

Mr. Humphrys: That is additional information?

The Chairman: Yes.

Mr. Humphrys: I would like to add, Mr. Chairman, in this preliminary comment, that legislation in this area is extraordinarily difficult. If one attempts to block every possible channel through which an ingenious person could use funds of a company for his own interest, one would have such a jungle of legislation and regulations that those administering them could probably not interpret them, and those who were subject to them would not know where they were at.

What has been attempted here is to go far enough to establish and lay down a general principle, and yet to try to limit the scope of the legislation to a point where it is reasonably understandable and is not so complex as

to leave the situation such that the investment managers do not know whether they are doing what they should be doing or not.

We recognize that there are still ways that a conflict of interest could arise, where one could find one's way through the prohibitions here. We think, however, that it goes far enough to deal with the main classes of cases that have given rise to difficulty.

One more point: Since the bill was introduced, we have had some discussions from persons who are concerned and a few points have arisen and a few questions have been asked. I would like to say by way of clarification that it was not intended that investments or loans by an investment company to its subsidiaries would be barred. It was intended, however, that direct or indirect beneficial ownership would enable the ownership to be traced down through a chain of corporations so that the purpose of the prohibition would not be defeated by interposing corporations between the major shareholder and the company that is in question.

Senator Molson: May I ask my question now, Mr. Chairman?

The Chairman: Yes.

Senator Molson: In section 8(1)(a)(i) provides:

No investment company shall knowingly make an investment

(a) by way of a loan to

(i) a director or officer of the company . . .

I do not know whether an investment company is different from any other company, and I do not know whether this particular provision is in any other act—I am not a corporation lawyer—but right away I see here the elimination of a practice which I think is a good one, and which is a common practice, namely, that when an officer of a company, for the sake of argument, in any line of business is moved he usually gets a loan from the company for purposes of housing. As I read this provision, such a loan is prohibited. I point out that it is a very common practice. There is nothing hidden about it. It is not at all similar to some of the manoeuvres in connection with yachts, and other such loans made by famous finance companies. This is an above board practice which in some cases is necessary to the business in order to be helpful to people who are asked to do certain things for

the benefit of the company. Such a practice would be prohibited under this particular provision.

Mr. Humphrys: Yes, Senator Molson, you are correct. It would be prohibited. This is exactly the same provision that applies to insurance companies, trust companies and mortgage loan companies.

Senator Molson: We are getting into all types of corporations here, and this, as I have said and said many times, would not be at all objectionable, or present any problems, to these companies if it merely required that they be told that they are such companies, and that therefore they are prohibited from doing this.

The Chairman: Of course, you have the provision in section 193 of the Canada Corporations Act that no company shall lend any of its funds to any shareholder.

Senator Molson: Yes, but that is to a shareholder.

Senator Phillips (Rigaud): There is also section 15 of the Canada Corporations Act.

The Chairman: Yes.

Senator Connolly (Ottawa West): Could section 15 be put on the record?

The Chairman: Section 15(1) provides:

A company shall not make any loan to any of its shareholders or directors or give whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in connection with, a purchase made or to be made by any person of any shares in the company.

This is another type. Then there are exceptions, and subsection (2) provides:

Nothing in this section shall be taken to prohibit:

(a) the lending of money by the company in the ordinary course of its business where the lending of money is part of the ordinary business of the company.

(b) the making by a company of loans to persons, other than directors, *bona fide* in the employment of the company with a view to enabling or assisting those persons to purchase or erect dwelling houses for their own occupation. . .

This deals with employees, and not directors.

Senator Molson: Officers.

Mr. Humphrys: The Canada Corporations Act would permit a mortgage loan to an officer, but not to a director.

Senator Connolly (Ottawa West): Would you repeat that?

Mr. Humphrys: It would permit a mortgage loan to an officer, but not a director. Under the other acts I cited mortgage loans to employees would be permitted, but not if they are officers or directors.

Senator Phillips (Rigaud): May I put a question, Mr. Chairman?

The Chairman: Yes, certainly.

Senator Phillips (Rigaud): I should like to ask Mr. Humphrys whether in his opinion section 15 of the Canada Corporations Act, to which we have just referred, would supersede the provisions of section 8 of this bill that is now before us, or whether under a fundamental rule of law—I will not quote the Latin because I do not want to appear learned when I am not—a special statute would supersede a general statute.

Mr. Humphrys: I think the committee should probably pose that question to the representatives of the Department of Justice in order to get a definitive answer. I will say that in my own view there is not a conflict, and that the prohibition proposed in this bill would be effective.

Senator Phillips (Rigaud): It would be effective?

Mr. Humphrys: Yes.

The Chairman: I think the reason for that, Mr. Humphrys, is that it is stated in this bill that if there is any conflict between it, when it becomes law, and any other Act of the Parliament of Canada, the provisions of this bill shall prevail.

Mr. Humphrys: No, I think not, Mr. Chairman. I think that that provision deals only with the question of conflict between this bill and the act of incorporation of a company.

The Chairman: I thought it went further.

Mr. Humphrys: It is:

Where any conflict exists between any provision of this Act and any provision of

an Act incorporating an investment company or any amendment to such Act, unless that Act or amending Act by specific reference to this Act provides to the contrary, the provision of this Act prevails.

Senator Phillips (Rigaud): To what section are you referring?

Mr. Humphrys: That is subsection (5) of section 3. It is at the top of page 4.

The reason for my answer to your question, Senator Phillips, is that the Canada Corporations Act says that a company shall not make any loan to shareholders or directors. There is a prohibition, but it says that this section shall not bar certain other things. If a parliament adopts this rule then Parliament will then be saying it is barring certain other things.

Senator Phillips (Rigaud): I agree with you that this bill supersedes the provisions in section 15 of the Canada Corporations Act.

Mr. Humphrys: I should not have used the word "supersede", but in their connotation both would apply.

The Chairman: Well, it becomes a matter of interpretation because if there is conflict between the letters patent or the supplementary letters patent of a company that are issued under the provisions of the Canada Corporations Act, and to which such company is subject—do you not have to take it in that context when you are looking for conflict between this act and...

Mr. Humphrys: This subsection deals with conflict only with an act of incorporation, so you would only be dealing with...

The Chairman: But, if it is a letters patent company, the act of incorporation is under the provisions of the Canada Corporations Act, and it says so right in the statute. It is broader than just reading the objects of a letters patent company, and reading what you have provided here. For instance, in a letters patent company I have ancillary powers by virtue of the fact that I get letters patent, and one of those ancillary powers, even though it is not specifically set out in the letters patent, is that of investing moneys of the company not immediately required for the purposes of the company. There may be a conflict between that power which I may exercise, and some of the provisions of this investment

companies bill. Do you say in those circumstances that the investment companies act would prevail?

Mr. Humphrys: That was the intention of this subsection, Mr. Chairman.

The Chairman: Then, you see, you are bringing in a conflict in relation to the Canada Corporations Act as well as to the letters patent which proceed under that act, because you will not find the ancillary powers of investment, for instance, ordinarily set out in the letters patent. They flow from the fact that you have got the letters patent.

Senator Connolly (Ottawa West): You get them from the statute—I do not know whether it is section 14 or not.

The Chairman: I think it is section 17.

Mr. Humphrys: The intention is that both this act and the Corporations Act will apply to companies that are registered pursuant to the Corporations Act.

If there are conflicts where it is impossible to resolve them, this bill does not by its terms override. We believe that the two could be read in conjunction, and would not give rise to conflict.

Senator Connolly (Ottawa West): Just to clear up the point—the section giving ancillary powers under the Corporations Act is section 14?

The Chairman: Section 14 is the section.

Senator Connolly (Ottawa West): And these are very extensive?

The Chairman: Yes.

Mr. Humphrys: This bill would impose certain additional duties on the kind of companies subject to it, over and above the duties imposed by the Corporations Act. It would also have the effect of amending certain provisions, so far as section 8 is concerned, so far as affecting the investment.

Senator Connolly (Ottawa West): In other words, you agree with what was said?

Mr. Humphrys: Yes.

The Chairman: You will remember that last week I suggested for your consideration that you should have a good look at section 5(6) on the basis that, since Part I comes into force on proclamation, and Part III; and Part II does not come into force for two years, and

Part II is the part that gives you the sanctions—that you could have a situation, under section 5—and I am particularly looking at subsection (6)—you could have a situation where the superintendent and the minister would be in possession of information which might show that the company was in a sound financial position, but you would be without authority specifically in the act to do anything about it.

Senator Connolly (Ottawa West): For two years.

The Chairman: For two years. And I said that was a rather anomalous position for the Government, or any department of the Government, to let itself get into. Because if the company did proceed to fail, and you are in possession of this knowledge, I can imagine the newspaper columns and the public who might be affected by this failure, the criticism that would arise. I suggested to you that you consider how you would deal with that situation up until the time that you got your sanctions under Part III.

Mr. Humphrys: Mr. Chairman, it is a very real problem and one that gave us a great deal of cause for consideration. I do not know that I can add much to the comments I made a week ago. We felt that in launching this program, if the bill is passed, we could not conceivably be in a position to recommend the issuance of certificates or even the refusal to issue certificates for some considerable time. It is a new field. We have no one on our staff that we can propose as being expert in all the fields here. I do not think there is anyone in the Government service who could take this on overnight. It will take some time to obtain information, to become knowledgeable, to sort matters out and see what companies should remain within the scope, and which ones should be exempted. Until that time is reached, we felt we really could not implement the machinery in Part II.

The Chairman: But there is a gap there.

Mr. Humphrys: There is a gap. Though we are faced with the dilemma of how to get started. We do not want to bring Part II into force right away, because we could not recommend certificates, and as we started in and examined companies we might be issuing certificates, day by day or month by month, so some companies would have a certificate and others would not.

We thought, to get started, there was really no escape from this situation that the chairman describes, where we might be in possession of information and not be able to do anything about it in the sense of specific legislative sanctions.

We thought it was better to face that possibility than to carry on without knowing, without getting started in some fashion. It is dangerous to know and not be able to do anything, but I cannot really feel that the public interest is better protected by refusing to know.

I think that if we did know of such a case and if there were real danger to the public, we would do our best to see to it that the company revised its affairs or stopped floating some loan issues, we would be able to go to the Securities Commission, we would be able to do quite a bit, I think, in the way of influencing the direction. It is a dangerous situation, it is unsatisfactory, but we really could not find a way to escape from it.

The Chairman: I might that it may be that, by an addition to this bill, and maybe by an addition to the prospective sections in the Canada Corporations Act, that in those circumstances you would be authorized to convey this information to the Companies Branch; and the Companies Branch would have authority to require an amended prospective. Then the thing gets out in the open. I am looking at the disclosure. I would rather have the disclosure given at the time when the department has knowledge of it, than to have it given when the failure has taken place and the public have been rooked, maybe even more in the period of time between the time it came to the knowledge of the department and the time the failure occurred.

Senator Connolly (Ottawa West): Would something along these lines cure the situation—that where it is provided here that these two years should prevail, that there should be an additional clause, to the effect that, notwithstanding the two year delay, if the superintendent has the information which he has just described, that he shall have power to take such action as he sees fit to protect the public? He may not withdraw the certificate, because there has been no certificate; but there may be other avenues that he can proceed along, mentioned by him, mentioned by yourself, Mr. Chairman, that there may be other sanctions that are available to

him and a "notwithstanding clause" might assist.

The Chairman: Have you anything to suggest, Senator Phillips (Rigaud).

Senator Phillips (Rigaud): I have an alternative suggestion. I thought we had moved away from the straight path of section 8 and I would like to go back to section 8, with respect.

I think the superintendent will realize, with regard to my speech in the Senate, that I am somewhat schizophrenic: I am strongly in favour of Part I; and my views on Part II are reflected in my remarks.

I previously expressed strong approval of section 8 with respect to prohibited loans and investments. Incidentally, many organizations that were against this bill seemed to have been critical of me and felt that I went too far. I only mention that fact en passant as it is too much to expect from responsible organizations in respect of this bill.

Coming to section 8 I would like to make an observation, that any reaction to section 8 in my humble opinion will depend on the final analysis, on the ultimate decision arrived at in respect of the definition of investment companies. True we are proceeding by way of water-tight compartments. We have discussed the definition of "Investment company" and we are moving on, but in the final analysis we will deal with an integrated bill, and one's reaction to section 8 will depend to a considerable degree, when we come to definitive conclusions, on the definition of "Investment company". I for one would strongly support section 8 subject to one or two designations of the definition of investment companies. Not knowing what the outcome will be there, I will confine myself to section 8 only.

If an offence is committed under section 8, if I remember rightly, there is the imposition of a penalty not to exceed the sum of \$5,000. I do not think we had an indictable offence for a loan, but I think that under section 27 there is fine on summary conviction not to exceed the sum of \$5,000.

The Chairman: That is right.

Senator Phillips (Rigaud): I should like to make a suggestion on section 8. I am in complete sympathy with the difficulty of the Superintendent and the department in defining how to deal with loans. I notice that

under section 8 in dealing with the exemption you draw a distinction between a substantial shareholder and a significant interest concept, and I am trying to simplify the situation as a lawyer. The order of exemption is applicable to a substantial shareholder concept rather than dealing with a situation where the significant interest is involved. To my mind this reflects the difficulty of dealing with this situation from the point of view of providing flexibility and some relief.

This is my suggestion. If we were to leave the prohibited loans and investments in the form it now is, should we not impose upon companies that come under the jurisdiction in Part I the obligation to report such loans. If in the section, instead of dealing with exemptions with respect to substantial shareholders as distinct from significant interests, we stated, instead of it being a prohibited loan, if the loan is made it must be reported immediately, not later than seven days from the time of the making of the loan, and if in the opinion of the Superintendent of Insurance such loan is not in the interests of the company and the shareholders, and all the rest of it, it shall be deemed to be a prohibited loan or a prohibited investment, if it is an investment, within the meaning of section 8, you have the advantage of knowing at once when the loan is made, and the further advantage that you would be under an obligation, say within a week, ten days or a month, depending on the time you in your judgment think would be necessary in the final drafting of the statute, and you say, "This is a loan we do not like. We declare this loan to be a prohibited loan. We declare it to be a prohibited investment. We call upon you to cancel out the loan, to cancel out the investment. In any event, it is an offence under section 27 and you are subject to a fine".

The Chairman: This is in line with a suggestion Senator Molson was feeling his way on a few minutes ago.

Senator Phillips (Rigaud): I did not quite catch the significance of Senator Molson's suggestion.

The Chairman: That loans of this character covered by section 8 should not be generally and absolutely prohibited, but they should be reported.

Senator Phillips (Rigaud): I am sorry I missed that. The very fact I did not pick it up indicates that there may be at least some merit in it if two people think so.

Senator Connolly (Ottawa West): Could I ask Senator Phillips to elaborate?

The Chairman: Senator Phillips carried it further.

Senator Phillips (Rigaud): I am carrying it further. If information is within seven days given to the Superintendent we get after these dishonest people immediately instead of waiting for the power of inspection; we get it right at the beginning of the litigation.

Senator Connolly (Ottawa West): If you get into the grey area where it is doubtful whether it is a prohibited loan or not, it is recorded as you suggest, if the company undoes it at the instance of the Superintendent you would still suggest that the fine should be imposed?

Senator Phillips (Rigaud): No, I retraced my steps on that. I said unless it was undone. If it is done with dishonest intent in the opinion of the Superintendent...

Senator Connolly (Ottawa West): Then he can go to the court.

Senator Phillips (Rigaud): I would still bring him to court for having done it. If it is not in the opinion of the Superintendent done with dishonest intent, the undoing would be sufficient, without subjecting him to a fine. An immediate report brings you in control of the situation with the finance and loan companies that we are after right at the start.

Senator Connolly (Ottawa West): That is right.

Mr. Humphrys: What we were trying to do here, and what we thought was the best thing to do in this field, was to try to set down rules that were clear and that people could interpret, so they would know when they made the investment whether or not it was in violation of this requirement.

I fear that with the kind of rule Senator Phillips described the position of investment managers would be very uncertain. I would have thought they would be very upset about being in a position where at the discretion of some official they would be required to undo an unwise investment. It puts an enormous responsibility on the official concerned. Speaking as Superintendent of Insurance, I do not think I would want to be in a position, and I do not think I could be in a position, to say to a company, "This is an unwise investment". I can certainly define "significant

investment". We can all look at the extreme cases which are obviously unwise, but there would be a whole range here where I had thought it would be not appropriate for an official to try to impose his judgment over the judgment of the company. We tried to define a class of cases that swept within it the general field that had given rise to difficulty and yet was not so far-reaching as to interfere in a serious way with legitimate and proper investment activity.

Another thing about the suggestion, that stems from our own experience, is that when the loan has been made, when we find out about it, there is often nothing we can do. We would like to get it reversed, but that may not be possible. We are faced with a bad loan, or even an illegal loan, or an investment, and you just cannot get it back. You would love to, but if shares have been purchased or mortgage loans have been made and funds have been dispersed, the deed is done. I hope it would be possible to arrive at rules that would meet the point I described, that would define the class of cases where the worst abuses occur and yet would not be so far-reaching as to constitute a serious impediment to general investment activities.

Mr. Humphrys: I know that any such rule is going to cut in on some investments, but if it is not too extensive, it seemed to us that it was better to have definite rules than to have a discretion. I know, too, that in the United States in their Investment Companies Act they have quite very elaborate provisions on this point, and they have discretion with the Securities Commission. This is an extremely complex procedure. They have very complex, lengthy hearings on these things, and it becomes almost administratively unworkable.

The Chairman: First of all, Senator Phillips (Rigaud) was suggesting that if you offered the equivalent of an amnesty, by saying that, when this act comes into force, if you report the loans which offend and regress the situation, then there is no penalty.

Mr. Humphrys: I have no objection to removing the penalty. In fact, that general penalty provision at the end was not aimed at this particular point.

The Chairman: No, but it applies to it.

Mr. Humphrys: Really, in Part III we were thinking, in respect of the sanction, that the Superintendent would have the authority to

remove that particular investment from the financial statement. That was as far as we really intended to go in any sanction, because we felt it was quite difficult to establish the rules and we thought it not reasonable to impose penalties or sanctions of any harsh character because of the difficulty of really drafting appropriate legislation and the inevitable cases that will arise where, in spite of our best efforts and everybody's best efforts, there will still be some uncertainty.

The Chairman: It is now 12.30. I suggest that in respect of this bill with which we are now dealing, we adjourn until the next regular meeting of the committee, which, in the ordinary way, would be sitting next Wednesday. I would think by that time some of the people who wish to make submissions will be available. My own feeling is that when they come in we should hear them and then we can correlate that afterwards with the information Mr. Humphrys has provided.

Senator Connolly (Ottawa West): Mr. Chairman, before we hear the representations from any segment of the industry, there are two matters of general concern that I would like clarified by the department.

The Chairman: We were prepared today to listen to a submission, and we were going to

fit that into our schedule here. Likewise, if there are still specific questions on any aspect of the bill on which you want to get some information from Mr. Humphrys, that will be the first order of business next Wednesday.

Senator Connolly (Ottawa West): The two areas that I would like to do some questioning on are, first of all, the question of acceptance companies as defined in the Ontario Securities Act, and the matter of upstream and downstream loans within a corporate organization, which is referred to in a number of the briefs that we have had. I dealt with both these matters in the Senate. They are of general rather than specific character, and I would like to have that opportunity even before we go into the clause by clause consideration of the bill.

The Chairman: In respect of the hazardous substances bill, I hope you will remember that the committee has adjourned to the call of the Chair. In respect of this bill now before us, as I mentioned earlier, we are adjourning until the next regular meeting of the committee.

Senator Molson: I move that we adjourn.

The committee adjourned.

FEB 21 1969

CITY OF TORONTO



Government
Publication

First Session—Twenty-eighth Parliament

1968-69

THE SENATE OF CANADA
PROCEEDINGS
OF THE
SENATE COMMITTEE
ON
BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 16

WEDNESDAY, FEBRUARY 5th, 1969

Complete Proceedings on Bill S-27,

intituled:

"An Act respecting The Quebec Savings Bank".

WITNESSES:

Department of Finance: W. E. Scott, Inspector General of Banks.

The Quebec Savings Bank: Jacques de Billy, Counsel.

REPORT OF THE COMMITTEE

THE QUEEN'S PRINTER, OTTAWA, 1969

THE SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Lang
Aseltine	Desruisseaux	Leonard
Beaubien (<i>Bedford</i>)	Gelinas	Macnaughton
Benidickson	Giguère	Molson
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Inman	Welch
Connolly (<i>Ottawa West</i>)	Isnor	White
Cook	Kinley	Willis—(30)

Ex officio members: Flynn and Martin

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, January 30th, 1969:

"Pursuant to the Order of the Day, the Honourable Senator Bourget, P.C., moved, seconded by the Honourable Senator Gouin, that the Bill S-27, intituled: "An Act respecting The Quebec Savings Bank", be read the second time.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Bourget, P.C., moved, seconded by the Honourable Senator Gouin, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, February 5th, 1969.

(17)

At 11.20 a.m. this day the Senate Committee on Banking, Trade and Commerce resumed to consider Bill S-27, "An Act respecting The Quebec Savings Bank".

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Flynn, Gelinas, Haig, Hollett, Inman, Kinley, Leonard, Macnaughton, Molson and Thorvaldson—(19).

Present but not of the Committee: The Honourable Senators Bourget, Grosart, Phillips (*Rigaud*)—(3).

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Upon motion it was *Resolved* to print 800 copies in English and 300 copies in French of the proceedings of the Committee on the said Bill.

The following witnesses were heard:

DEPARTMENT OF FINANCE:

W. E. Scott, Inspector General of Banks.

THE QUEBEC SAVINGS BANK:

Jacques de Billy, Counsel.

Upon motion it was *Resolved* to report the said Bill without amendment.

At 11.40 a.m. the Committee proceeded to the next order of business.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, February 5th, 1969.

The Senate Committee on Banking, Trade and Commerce to which was referred the Bill S-27, intituled: "An Act respecting The Quebec Savings Bank", has in obedience to the order of reference of January 30th, 1969, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

THE SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE EVIDENCE

Ottawa, Wednesday, February 5, 1969

The Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-27, respecting The Quebec Savings Bank, met this day at 11.30 a.m. to give consideration to the bill.

Senator Salter A. Hayden (Chairman) in the Chair.

The Chairman: Honourable senators, we are dealing with Bill S-27. May we have the usual motion to print?

Upon motion, it was *resolved* that a verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 copies in French be printed.

The Chairman: To deal with this bill in the first instance and to give us his comments, we have Mr. W. E. Scott, Inspector General of Banks for the Department of Finance. Mr. Scott is here to tell us his views in relation to this bill.

Mr. W. E. Scott, Inspector General of Banks, Department of Finance: Mr. Chairman, perhaps I might confine the opening remarks to a rather short list of matters that would appear to be of some importance. If there are other matters that anyone would wish to pass on, I will be available following this.

The move of the Quebec Savings Bank from the present Quebec Savings Bank Act to the Bank Act would obviously increase the scope of its possible operations under the new legislation. It is presently confined to the district of Quebec. It would be able to operate in the whole of Canada, or outside Canada, if it wished. Its scope for business lending and for personal loans would be considerably increased.

In respect of only one kind of lending, I think, it would be restricted as compared to

its present position, and that is on conventional residential mortgages, where section 75(4) of the Bank Act would confine it to relatively modest increases in outstanding mortgages during the duration of the present Bank Act.

On the other hand, the liquidity requirements of the Bank Act might be somewhat more expensive for this bank than its present arrangement. Under the Quebec Savings Bank Act it must keep a cash reserve of 5 per cent of its total Canadian deposit. Under the Bank Act it would keep 4 per cent of time and 12 per cent of demand deposits.

Initially, with the present distribution of the Quebec Savings Bank deposit, its weighted average ratio would not be higher than five. It might be between four and five, but the present deviation of cash permits it to keep funds on deposit with other banks as part of its reserve. Frequently, these banks bear interest and, therefore, the cost of maintaining the reserve is not as high as it would be under the Bank Act, where the cash must be kept in the form of Bank of Canada notes and deposited with the Bank of Canada, and the Bank of Canada discounts the interest so that...

So, to offset the loss of earnings there would have to be some advantage taken of the larger scope of operation. In other words, the bank would need to grow to end up in as good a financial position as it is today.

The third and final respect in which there might be a change does not relate to the financial aspect, but to the position of shareholders. The returns made to the minister under section 97 of The Quebec Savings Bank Act, and which are tabled in Parliament, indicate that there is one shareholding considerably in excess of ten per cent, the limit which was put into the Bank Act in 1967. This holding predated 1967, and has carried on as is permitted under the act, but there is

no provision in this bill to permit that situation to continue, nor is there any provision in the Bank Act under which it could continue. So, if and when this bill comes into effect that holding will have to be reduced to not more than ten per cent, or the holder will lose his voting rights.

Senator Connolly (Ottawa West): All of his voting rights?

Mr. Scott: Yes, they would be suspended, in other words, until the holding is reduced. I think those are the only three aspects on which I would want to comment.

The Chairman: At this stage is there anything that you wish to add on the negative side?

Mr. Scott: No. I think, as I mentioned, Mr. Chairman, it will be the success of the bank in expanding its operation that will govern how it will work out. If it is no larger some years in the future than it is now then it will not have gained.

The Chairman: If it is no larger a few years from now that it is now...

Mr. Scott: ...then the increased liquidity requirements might have operated to leave it less favourably placed financially.

Senator Molson: Will it have any problem in getting up to the liquidity requirements?

Mr. Scott: No, I would not think so. It would simply reduce the balances kept at chartered banks and on deposit with the Bank of Canada.

The Chairman: Are there any other questions of Mr. Scott? Mr. de Billy, you are here on behalf of The Quebec Savings Bank?

Mr. Jacques de Billy, Counsel, The Quebec Savings Bank: Yes, Mr. Chairman.

The Chairman: Is there anything that you or Mr. Foucault, the General Manager, would like to add?

Mr. de Billy: No, Mr. Chairman.

Senator Gelinas: May I ask a question, Mr. Chairman. Why is the name in French to be "La Banque Populaire", and in English "The People's Bank"? The one is not a translation of the other.

Mr. de Billy: Of course, senator, the bank will be operating in a French speaking district, and the name "La Banque Populaire" is

a name that the bank wished to have. If you translate it as "The Popular Bank" it would not have the same meaning. After consultation it was decided that "The People's Bank" would be the best translation under the circumstances of "La Banque Populaire".

Senator Gelinas: Do you not think "La Banque du Peuple" would be just as good?

Mr. de Billy: Yes, but what's in a name? Maybe "La Banque du Peuple" would be just as good, but the directors of the bank prefer "La Banque Populaire".

The Chairman: By putting in the word "Popular" does not necessarily make it popular.

Mr. de Billy: No, unfortunately.

Senator Connolly (Ottawa West): I should like to ask Mr. de Billy a question on that point. The caisses populaires are very widespread institutions in the Province of Quebec. You now have a banque populaire. Is there going to be confusion in the minds of the public?

Mr. de Billy: Well, there are many institutions that have names that are similar. There are, for instance, the Royal Trust and the Royal Bank; the Bank of Montreal and the Montreal Trust. In the insurance field you have the Prudential of America and the Prudential of England, and so on. This is a bank, and the caisses are quite different institutions. The important word is the word "bank" or "banque". A caisse populaire does not stand by itself; its name would be the Caisse Populaire du St. Michel or the Caisse Populaire du St. Pierre.

The Chairman: Senator Connolly, in any event, we have received no letter from any source objecting to the name.

Are you ready for the question?

Senator Molson: I should like to ask one question. Has there been any precedent on this matter of English and French names not being translations of each other? I do not remember any bills coming to us that have ever varied from what one would describe as the closest translation. There is some question here as to whether this is a translation of the French into English, or the English into French.

The Chairman: I do not know of any law that provides that one has to be a translation

of the other. The point is just what the organization is to be called in English and in French.

Mr. de Billy: If I might mention it, I remember one instance a few years ago of a company that was incorporated under the French name of L'Assurance-Vie Desjardins in French, and under the name of Desjardins Mutual Life Insurance Company in English.

Senator Molson: But the word "Desjardins" was in both names.

Mr. de Billy: Yes, but the word "mutual" was not in the name in French. Parliament gave it the name of Desjardins Mutual Life Insurance Company. In the English name it

added the word "Mutual" which does not exist in the French name.

The Chairman: Are you ready for the question?

Senator Macnaughton: Mr. Chairman, in any event, it is the decision of the board of directors to use these names.

The Chairman: That is right, and there is no law that says they must be a translation of each other.

Senator Macnaughton: That is right.

The Chairman: Shall I report the bill without amendment?

Hon. Senators: Agreed.



First Session—Twenty-eighth Parliament
1968-69

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THE SENATE OF CANADA
PROCEEDINGS
OF THE
SENATE COMMITTEE
ON
BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 17

WEDNESDAY, FEBRUARY 5th, 1969

First Proceedings on Bill S-26,

intituled:

"An Act to prohibit the advertising, sale and
importation of hazardous products".

WITNESSES:

Department of Consumer and Corporate Affairs:

The Honourable Ronald Basford, Minister.

R. W. James, Director, Consumer Research Branch.

THE QUEEN'S PRINTER
OTTAWA, 1969

THE SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Lang
Aseltine	Desruisseaux	Leonard
Beaubien (<i>Bedford</i>)	Gelinas	Macnaughton
Benidickson	Giguère	Molson
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Inman	Welch
Connolly (<i>Ottawa West</i>)	Isnor	White
Cook	Kinley	Willis—(30)

Ex officio members: Flynn and Martin

(*Quorum* 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, February 4th, 1969:

“Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Carter, seconded by the Honourable Senator McGrand, for the second reading of the Bill S-26, intituled: “An Act to prohibit the advertising, sale and importation of hazardous products”.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Carter moved, seconded by the Honourable Senator Eudes, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.”

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

Wednesday, February 5th, 1969.
(18)

Pursuant to adjournment and notice the Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Flynn, Gelinas, Haig, Hollett, Inman, Kinley, Leonard, Macnaughton, Molson and Thorvaldson. (19)

Present but not of the Committee: The Honourable Senators Bourget, Grosart, Phillips (*Rigaud*). (3)

In attendance:

E. Russell Hopkins, Law Clerk and Parliamentary Counsel; and
R.J. Batt, Assistant Law Clerk and Parliamentary Counsel and Chief Clerk
of Committees.

Upon motion it was *Resolved* to print 800 copies in English and 300 copies in French of the proceedings of the Committee on the said Bill.

Bill S-26, Hazardous Products Act, was read and considered.

The following witnesses were heard:

DEPARTMENT OF CONSUMER AND CORPORATE AFFAIRS:

The Honourable Ronald Basford, Minister.
R.W. James, Director, Consumer Research Branch.

At 11.15 a.m. the Committee adjourned consideration of the said Bill to the call of the Chairman and proceeded to the next order of business.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

THE SENATE

THE STANDING COMMITTEE ON BANKING, TRADE AND COMMERCE

EVIDENCE

Ottawa, Wednesday, February 5, 1969

The standing Committee on Banking, Trade and Commerce, to which was referred Bill S-26, to prohibit the advertising, sale and importation of hazardous products met this day at 9.30 a.m. to give consideration to the bill.

Senator Salter A. Hayden (Chairman) in the Chair.

The Chairman: Honourable senators, I call the meeting to order. We have two bills before us this morning, plus the one on which we commenced our consideration last week. It is proposed, subject to the wishes of the committee, to proceed to consider Bill S-26, which concerns hazardous products. May I have the usual motion for the printing of the proceedings?

The committee agreed that a verbatim report be made of its proceedings on the bill.

It will be recalled that a bill similar to this one was before us last year. We heard a good deal of discussion on it, and changes were made. Then, of course, there was a realignment of the bill's provisions, as was explained by Senator Carter when he moved the second reading of Bill S-26 in the Senate. We have received no requests to be heard from the public this time, so I see no reason why we should not proceed this morning to consider this bill.

The minister is with us, and he will make a statement in connection with the purposes of the bill, after which the meeting will be open to questions.

Have you anything to add, senator, before we commence?

Senator Carter: No, Mr. Chairman, I have nothing to say in addition to what I have said already.

The Chairman: Mr. Minister?

Hon. S. Ronald Basford, M.P., Minister of Consumer and Corporate Affairs: Mr. Chairman and honourable senators, I should like first to express my

thanks to Senator Carter for his speech when he introduced this bill in the Senate, and to thank those honourable senators who made a contribution to the debate, all of which I have read except the conclusion last night. Some of the questions asked in the debate have been answered by Senator Carter in the Senate, and others that arose in the debate can be answered this morning. I have a short statement that I should like to make—I hope it can be regarded as short—with respect to the bill after which, as the chairman has said, we can deal with specific questions.

As Senator Carter pointed out in his speech when he introduced the bill, we have had a very long tradition in this country of protecting the purity and safety of the foods and drugs that are offered for sale. I think honourable senators are familiar with the work of the Food and Drug Directorate, and of the Health of Animals Branch, and other branches of the Department of Agriculture, all of which are designed to give us a very high degree of assurance that we, as consumers or customers, are not going to be poisoned or sickened by the food we eat. There is, however, a lack of balance—and this is really the purpose of this bill—in the protective machinery because the Canadian public is exposed to significant risks from products which are neither foods nor drugs, which are not covered by our existing legislation. We have had a number of instances in recent years of toxic or contaminated products which could be dealt with only with considerable difficulty, if at all.

It may surprise honourable senators to hear me say that Canada is really several years behind countries such as the United States and Britain in passing legislation, along the lines we are dealing with this morning, to protect the consumer. "The right to safety—to be protected against the marketing of goods which are hazardous to health or life," headed the list of Senator John F. Kennedy's famous list of Consumer Rights.

As early as 1953 the Flammable Fabrics Act was made law by the United States Congress to protect the consumer from clothing containing dangerously flammable fabrics. In 1967 this act was amended to provide for more stringent flammability tests and to

encourage research and investigation into the whole problem of fabric flammability. In 1960 the Hazardous Substances Labelling Act was passed in the United States. This act was amended in 1966 by the Child Protection Act. As it now stands, the United States Hazardous Substances Act requires the mandatory labelling of all hazardous substances such as cleansers, polishes, bleaches, drain cleaners and toxic solvents such as glues containing toluene, which are sold in interstate commerce. It also bans household substances or toys containing substances deemed so hazardous labelling would not provide sufficient protection. It also established—and I think some of my officials will have something to say about this later—a council to deal with protection and safety.

Britain — and I would like, if I may, Mr. Chairman, just to mention that briefly — has also had a law protecting the consumer from hazardous products for several years. The Consumer Protection Act was passed in 1961. The act empowers the Home Secretary to make regulations for any prescribed class of goods regarding the composition or contents, design, construction, finish or packaging, in order to prevent or reduce the risk of death or personal injury. Regulations have been passed under that act dealing with fireguards, portable oil heaters, children's carry-cot stands, mandatory flame-resistant materials for children's nightdresses or night clothes and the safety of toys.

I have all that legislation here, if honourable senators wish to take a look at it.

The British and American laws provide for thorough inspection procedures to ensure compliance with the regulations of each respective act. Stiff fines are also imposed for contravention of the acts, especially for second offences.

The Hazardous Products Act, which is now before this committee, is designed to provide Canadian consumers with the same basic protection which exists in both Britain and the United States.

The fact that the vast majority of children survive the hazards of infancy is sometimes a cause for wonder by parents and other observers. The fondness of children for chewing on their cribs, rattles and toys creates a serious danger if they swallow an appreciable amount of poison in the process. The use of lead-based paints on objects which children come in contact with is obviously undesirable. This is why the Hazardous Products Act, in the Schedule, makes provision for the effective elimination of lead in any paints which children may eat.

Paints and related products also present other hazards. Many paints, thinners and similar products give off volatile fumes which may be inadvertently ignited. Sometimes, these products have such a low flash point that they are not safe for household use. When such products can be classed as extremely

dangerous they clearly should not be permitted for household use.

There is, however, a wide range of other household products which are hazardous but cannot reasonably be banned. It is true, for example, that gasoline is a dangerous product because of its high flammability but it would be absurd to want to ban its sale. For such classes of essential but potentially hazardous items we must devise other expedients and, with regard to gasoline, many of our provinces and municipalities are devising these expedients.

I would like now, Mr. Chairman, to mention a few problems of accidental poisonings. We do not know with any degree of precision the total number of accidental poisonings in Canada each year. We can, however, establish minimum levels based on the reports of the poison control centres across Canada. I am referring here exclusively to poisonings that do not involve drugs and medicines. In the 1966 statistics on the poisoning of children less than five years old, we find the following causes and figures: cleaning and polishing agents, including bleaches, 3,852; cosmetics, 1,627; substances eaten as food, including inedible plants, 880; painting and building products, including turpentine and solvents, 1,240; pesticides, 994; fuels and lubricants, 886.

It is abundantly clear from this that immediate attention should be devoted to the category of cleaning and polishing agents and bleaches. This explains, for example, why the first three items of Part II of the Schedule cover bleaches, sanitizers, cleaners and polishes and other cleaning agents.

Within the past several years, solvent sniffing by youngsters has become widespread and this has created both a social problem and a health hazard in Canada. Provision is made under the authority of this act to control the sale of the type of glues favoured by the sniffers. We recognize that this is a social and psychological problem and that all the regulations in the world are not going to solve the problem, but we do feel that some regulation can be helpful and can reduce the amount of glue sniffing. We have not yet worked out—because the legislation is not passed—a complete control program, but we have been considering a number of steps. Honourable senators may wish to ask about these. We are looking at such things as mandatory cautionary warnings on all tubes of glue; the removal of glue from open display counters, etc. Honourable senators will understand that this is a complicated problem and that there is no simple answer, but at least we are being given, or are asking for, the machinery by which we can start to find the answers and try to solve the problem.

We have had some preliminary discussions with some of the producers, and it would also be my intention to continue these discussions, with a view to obtaining aid in solving the problem.

I have also been asked about protection in regard to burns. Burns occurring in the household constitute a significant public health hazard. It is estimated that 176,000 burns occurred in Canada in 1966 and that approximately 75 per cent of those occurred in and around the home. Many serious burns are associated with clothing which catches fire. Many types of ordinary clothing will burn readily when ignited, and it hardly needs emphasizing that clothing burns often involve large areas of the body. The results are a shocking loss of life, human suffering, emotional shock and very high costs for medical care. We know that certain types of fabrics ignite very readily and burn vigorously. It is my firm belief that fabrics which can reasonably be classed as dangerously flammable should be classed as hazardous products and should not be used for apparel or household furnishings. The determination of flammability standards is a technically complex problem. I am glad to be able to say that we have been able to enlist the support of the Canadian Government Specifications Board, the National Research Council, the Ontario Research Foundation, the Department of Public Works and the Department of National Defence in a research and testing program. This program is under way now and it is hoped that some preliminary results will be available soon. We will have to allow some time for consultation with the textile industry on the implications of banning dangerously flammable textiles from the market.

Many accidents are caused in part by human carelessness or foolishness, but this does not mean that we can adopt a fatalistic attitude and shrug off the problem with the remark that "accidents will happen." It is an observable fact that many types of household appliances do present an undue hazard and that even a prudent householder is exposed to unnecessary risk. The Consumers' Union in the United States has had extensive experience in testing household products. They have reported that, in the 10-year period 1956-1966, they found nearly 400 products to be unacceptable because they were dangerous. Out of the total, 150 electronic products, toys, appliances and tools had electrical hazards; over 100 had mechanical hazards; and the others had sharp edges, were poisonous, presented fire hazards or had some other dangerous quality.

Nothing I say should be taken to suggest that consumers are devoid of all protection in the household appliances and items they now use. There is, in fact, a large volume of engineering and product standards developed by such bodies as the Canadian Standards Association and the Canadian Gas Association, among others, which afford a real measure of consumer protection.

However, many of the standards which now exist are related to performance or composition or a manufacturing process and may or may not emphasize

consumer safety. Apart from this, many standards are voluntary. We must, in my opinion, make sure that proper attention is paid to the factor of consumer safety by all standards-setting agencies. Once a satisfactory standard exists from the point of view of consumer safety, the next logical step would be to prohibit the sale of sub-standard products. A case in point is life saving equipment. Standards of safety have been developed for this equipment and it is my contention that life saving equipment which does not meet these standards should not be sold in Canada. I fully expect that the successful operation of the Hazardous Products Act will depend heavily on the intimate co-operation of the Canadian Standards Association, the proposed Standards Council of Canada and the various trade and industry associations which are concerned with consumer goods.

Some preliminary conversations have already been held with organizations such as the Canadian Manufacturers of Chemical Specialties on methods of consultation. You had them before you when you were considering Bill S-22 in the last Parliament. It is my intention to establish formal and informal contacts with industry so that my department can benefit from their knowledge of the practical problems of introducing labelling or control programs. There is already a clear understanding with the Department of National Health and Welfare that their medical and toxicological experts will advise and assist us in dealing with the problems of safety levels and other technical matters. The wide experience of the Food and Drug Directorate in the administration of the Food and Drugs Act will undoubtedly be of great assistance in the extension of safety controls to other products.

For many potentially dangerous household products such as caustic or toxic or flammable liquids, the principal kind of regulatory action under the act will be to require more specific and complete cautionary labels. Sometimes people do not realize the extreme toxicity of some ordinary household products, particularly if they are swallowed by small children. There should obviously be a clear and explicit cautionary statement on the label and a warning that the products should be kept out of the hands of small children. An excellent labelling code has already been developed by the Canadian Manufacturers of Chemical Specialties and is used widely by their members, and again I compliment them for drawing up this code. It is, however, a voluntary code and it is clearly desirable to have the existing code or some modification of it used throughout the industry.

Another possible alternative would be to develop childproof closures for household chemicals, similar to the closures which are now being developed for drugs. If modern technology can send men into orbit around the moon, it should be able to defeat the considerable ingenuity of little children. It may be that we can develop meaningful and arresting cautionary symbols.

Some people are reluctant to read labels and some other visual appeal may be more effective.

In conclusion, Mr. Chairman, there is one important aspect of the Hazardous Products Act that I want to stress. We cannot possibly know at this time all the hazardous products that are on the Canadian market or that will appear on the market in the future. A restrictive or limited interpretation of the coverage of the act might have the most serious consequences in the future and might mean that the government would lack the power to act in an emergency situation. It is for this reason that the act is framed to provide quite general coverage of the kinds of things that might be determined to be dangerous or hazardous. I would hope that this will not lead anyone to believe that we propose to declare hammers a hazardous product because people hit their thumbs with them. On the other hand, the act does recognize the desirability of providing for a review process, which is to be carried out by the hazardous products board of review. Such a board will be constituted if a manufacturer, wholesaler or distributor feels that the action taken under the act is mistaken and misguided. The board will be empowered to obtain all the relevant evidence concerning the hazards attributed to the product and to report to the minister. The act makes provision for publicizing the results of such inquiries. It is anticipated that this system will prevent any hasty or ill-advised additions to either the banned or controlled products, which may be included in the Schedule.

That is my overly long introductory statement, Mr. Chairman. I am now open for any questions that honourable senators may have.

Senator Croll: After that short statement may I just put this to you. You started out by saying you were two years behind the times in this sort of legislation. Can we assume that you will not likely make that statement when you appear again in connection with a similar undertaking, so that next time you will be perhaps two years ahead of, say, Britain and the United States in respect of these matters?

Hon. Mr. Basford: I hope that in some respects Canada could lead the world.

Senator Croll: You have a department now to deal with this matter. What I really wanted to ask was this. You spoke about protecting little children. What about protecting someone who is a little older than little children, a fellow like myself, against health and safety hazards? What about substandard tires that are sold? What can you do, or what do you do, about substandard corrosive cars?

Hon. Mr. Basford: The specifications board has prepared and published a specification for tires which my information indicates most of the provinces have

accepted, and require the use of it within their provinces, so at the moment I would think that situation is covered. Dr. James might want to add to what I have said, but at the moment we have protection at the national level of a national standard through the specifications board, and the provinces have required the use of this standard.

Senator Croll: What brings this to my mind is the fact that, in the United States, national tire associations of renown have recently been brought before the appropriate board in the United States on charges that they were guilty of passing out substandard tires. Have we made any investigation in this country of tires manufactured by the same people?

Hon. Mr. Basford: We have not, I am not sure whether the Department of Transport, which is the department responsible for car and tire safety, has done so. I would like Dr. James to supplement this. I know there have been several meetings and conferences with the provinces to persuade them to accept, as they are accepting, the standards specified for tires by the specifications board. I do not have a copy of it here, but it is a standard which specifies certain minimum requirements for tires, and it is designed to give minimum safe standards to tires.

The Chairman: Is the administration of that in your department?

Hon. Mr. Basford: No.

Senator Croll: So that belongs to the Department of Transport?

Hon. Mr. Basford: Yes.

Senator Croll: It is in no way connected with your department at all?

Hon. Mr. Basford: No.

The Chairman: Why should not standards be assembled in one place?

Hon. Mr. Basford: I appreciate your support of my department, Mr. Chairman. Last July the standards branch of the Department of Trade and Commerce was transferred to my department. We will also be represented on the proposed standards council that will be formed.

Senator Macnaughton: Mr. Chairman, Mr. Minister, you invited us to ask the following question so I will ask it: What steps does your department have in mind taking now?

Hon. Mr. Basford: Well, the act has the Schedule which you have in front of you. On Royal Assent of

the act, the first three items in Part I will become illegal immediately. Part II is declared or becomes effective only on proclamation. That is, section 16 declares that Part II will become effective on proclamation.

It will be some time after royal assent before we will be prepared or able to declare or proclaim Part II.

We have within the department drawn up very rough draft regulations to cover most of the things listed in Part II. We will, however, and we have not in any way concluded this or really even started it, want to consult in terms of those regulations with the industries affected in the items in Part II before we proclaim them. Therefore, it will be some time before Part II applies.

But we have, as I mentioned in my statement, the labelling code of the Canadian Association of Chemical Speciality Manufacturers. We will want to discuss much further that code and our draft regulations covering, for example, bleaches, cleaners and sanitizers with the manufacturers, at which point they will then agree on the regulations which will have to be passed by Governor in Council and proclaimed.

Senator Kinley: There are a lot of inventories all over the country. The merchants in Canada have a great deal of merchandise on their hands. What are you going to do with the inventories that they have? Are they going to have to destroy their stock?

Hon. Mr. Basford: No. Let me draw an example of something that is going on right now with respect to a totally different product not related to hazardous products at all. Some senators may be familiar with the sale of Greenland halibut by the Newfoundland fishermen to the Canadian and American markets. The American authorities recently, last year, declared that they regarded this as a deceptive title or name for this product. The American food and drug authorities said that it could not be labelled Greenland halibut, but would have to be labelled Greenland turbot. Our own fisheries department recently passed a similar regulation, which does not come into effect until some time in April. This delay is designed solely to let the fishermen get their inventories off the market.

Admittedly, that is dealing with a product that is not hazardous, but I do want to point out, senator, that with regard to Part I items, things that are dangerous and poisonous and extremely hazardous which may come on to the market will be added to Part I immediately, and any inventory can be seized. I draw the example which has been mentioned again and again, and was mentioned in the debate in the Senate — the jequirity bean case, where it was found that there were necklaces and broaches made of certain West Indian beans that are extremely poisonous and hazardous. Our food and drug administration had to go to a great deal of difficulty to get those

products off the market. This legislation now gives us the legislative authority to deal properly with that situation. If jequirity beans are in Part I, then anyone who has jequirity beans in stock will have in stock an illegal substance which is subject to seizure.

The reason for this is that, in that aspect of it, this is a measure to protect the health and safety of the public.

Senator Kinley: Will this bill come in right away?

Hon. Mr. Basford: It comes into effect and is law on Royal Assent, but, if you will look at the act you have in front of you, you will see that with respect to the items listed in Part II the law will not affect them until proclamation.

Senator Kinley: Will there be a hiatus between the passing of this act and its coming into effect so that the merchants will have time to get clear of stock that is mentioned in the schedule?

Hon. Mr. Basford: With respect to Part II items, yes. The purpose of the proclamation is so that we can sit down with the industry and work out the problems of labelling requirements, precautionary aspects, and so on.

Senator Kinley: What is the penalty of Part II? Is it the same penalty under each part? I notice it is \$1,000 presently.

The Chairman: Everything is relative, senator.

Senator Kinley: Is a magistrate allowed discretion?

Hon. Mr. Basford: Yes.

Senator Carter: Mr. Minister, what will be the disposition of substances that are hazardous for a particular use, but are not hazardous for other uses? For example, flammable textiles might be hazardous for apparel for every day wear in the kitchen, but might be useful for some other purpose. How do you propose to handle that situation? It would not seem fair for a merchant who has \$1,000 worth of a product on his shelves to face a total loss upon seizure, if the product could be sold under some regulation which would ensure that its use was not hazardous. After all, sometimes hazards arise out of the use to which a product is put as much as from the nature of the product itself.

Hon. Mr. Basford: Exactly, senator. This is why we would proceed as the British have proceeded: Not outlawing a certain textile or a certain fabric, but outlawing its use for certain apparel. As I mentioned, under the British act they have dealt with and regulated the use of certain materials for children's

night clothes, but that does not prevent the manufacturer of that textile from making men's shirts out of it.

Senator Carter: That would be taken care of under section 7, by the regulations?

Hon. Mr. Basford: Yes.

The Chairman: Well, it would really come under section 3.

Hon. Mr. Basford: The regulation governing the textile would come under section 3, yes.

Senator Carter: Yes, but I was thinking of the disposal of it. The regulations under section 3 would refer to its sale, advertisement, or importation, but disposal is a separate thing. Would that be included under section 3, or would it be necessary to have a separate regulation under section 7?

Hon. Mr. Basford: It would be under regulations made governing the items in Part II of the Schedule which would be made pursuant to section 7.

The Chairman: But also covering Part I, because you may have to go in and seize prohibited hazardous products, and then there is a provision in the bill for their disposal?

Hon. Mr. Basford: I think the senator was referring to certain fabrics that will not be used for certain garments.

Senator Leonard: Mr. Chairman, my recollection is that when we considered a similar bill respecting hazardous substances last year, representatives of the chemical industry appeared before us and took exception to the definition of "flash point" that then existed. I think the matter was left that there would be some discussions between the trade association and the departmental officials. My question is: Is the definition of "flash point" that appears in this bill the same as that in the bill we considered at the last session, or did a discussion of this take place?

Hon. Mr. Basford: No, this is the same "flash point", as it was amended by the Senate last session. The discussions referred to took place in this committee, and the amendment was made in committee.

Senator Leonard: You have refreshed my memory.

Hon. Mr. Basford: It was, I think, 40 degrees, was it not?

Senator Leonard: Yes, that is right.

Hon. Mr. Basford: Yes, and the committee reduced it to zero.

Senator Molson: Mr. Chairman, last night we heard a number of comments about the Canadian Government Specifications Board. I wonder if we could, for the record, have a description of this Canadian Government Specifications Board which is mentioned in paragraph 3 of Part I of the Schedule.

Hon. Mr. Basford: May I ask Dr. James to deal *in extenso* with the Canadian Government Specifications Board?

Dr. R. W. James, Director, Consumer Research Branch, Department of Consumer and Corporate Affairs: Mr. Chairman, the Canadian Government Specifications Board is now an agency of the Department of Defence Production. Its primary purpose is to establish specifications for items being procured by Government departments, primarily the Department of Defence Production, which is the major procurement agency. It is the most knowledgeable Government agency on standards and specifications in so far as consumer needs are concerned.

The federal Government, as will be recognized, is a major purchaser of consumer goods and, therefore, a great many specifications have been drawn up for procurement purposes. Many of these specifications can, of course, be adapted for the purposes of the Hazardous Products Act in the sense that the specifications will embody certain safety features.

I might mention as an example that the Canadian Government Specifications Board drew up the present specifications for life jackets. They have also undertaken on our behalf to draw up a specification and standard for matches. Personally, I believe that they can have a significant influence on the machinery which can be used to implement the intent of this legislation.

Senator Connolly (Ottawa West): Do they work with the industry affected in each case, or do they work on their own.

Dr. James: The characteristic pattern used by the Canadian Government Specifications Board is to establish a committee which consists of representatives of the Government departments interested and, normally, retailers and the industry. There is a broad spectrum of representation of all interested parties on the C.G.S.B. committees. They do not, in fact, vote in these committees; rather, the committees operate by consensus.

Senator Connolly (Ottawa West): They are in touch with the industries affected, and they know what is possible and what is impossible, and they try to reach a maximum level of safety?

Dr. James: They are very closely in touch with the industry on all of these matters, senator.

Senator Flynn: Mr. Minister, may I say that in my mind Part I and Part II of the Schedule are merely indicative at this time of the outlook of your department and, in fact, this bill is seeking for the Governor in Council the authority to decide what is a hazardous product at any time without any control by Parliament. Possibly you would say there is no other way of dealing with this problem. I think we are all in agreement with the objectives of the bill, but would you say there is no other way of dealing with this than to give this very wide authority to the Governor in Council?

Hon. Mr. Basford: Yes, I would say that.

Senator Flynn: You would?

Hon. Mr. Basford: Experience really makes this necessary. This is why, in my opening statement, I mentioned the British and American experience. In the United States they started off with a very minimal act concerning the labelling of flammable products, and over a short period of time—some six years—they have run the whole gamut of legislative action, and have now ended up with a very comprehensive hazardous substances act. We, starting late, are able to gain from the American experience, and we are starting, we think, with a comprehensive act.

The British jumped right in, if I may put it in that way—perhaps I might read from their Consumer Protection Act. It says:

The Secretary of State may by regulations impose as respects any prescribed class of goods—

And then it sets out the labelling, and so on.

Senator Flynn: It is practically the same language as here.

Hon. Mr. Basford: Yes. We have in section 8 limitations which are not in the British Act at all. The substance has to be poisonous, toxic, flammable, et cetera, and it has to be for household, garden, or personal use.

Senator Flynn: My main question is in connection with section 9—the Board of Review. You say that where a product or substance is added to Part I or Part II, any manufacturer or distributor of that product, or any person having it in his possession for sale, may make a request for a reference to a Hazardous Products Board of Review, and subsection (2) says:

Upon receipt of a request described in subsection (1), the Governor in Council, on the recommendation of the Minister, may establish a Hazardous Products Board of Review—

It seems to me that this right of appeal is in the discretion of the minister. I would feel happier if it was compulsory for the minister to set up this board of review whenever a manufacturer is hit by an order in council. You may say: "Oh, well, this is not a serious complaint", and it seems to me that under the section as it is drafted you may refuse the establishment of a board of review. You may be badly counselled by your officials. I am sure that they are all very highly qualified, but that could happen accidentally.

Hon. Mr. Basford: The purpose of the "may" is to avoid duplication. If a product is dealt with under either Part I, of Part II of the Schedule, it may affect the ten manufacturers of the product. If it is a "shall", we would have to have ten inquiries.

Senator Flynn: Would you set up a board for each case?

Hon. Mr. Basford: If it is a "shall" I would have to. The use of "may" allows me to hold one inquiry on that product.

I do not entirely accept the premise that what we as ministers do is not open to review. We have a question period in the House of Commons and we have a very alive and alert opposition. Anyone who feels aggrieved by the action of any minister has, in our system, his remedies. If I or my departmental officials acted in any arbitrary or reckless way, I think that the political processes of the country provide a remedy.

Senator Flynn: It is not sufficient.

Hon. Mr. Basford: The reason for the "may" is simply to avoid the necessity of having ten inquiries dealing with the same end product. It would allow me to set up a board of review to deal with, say, life jackets, which has been mentioned as an example.

Senator Macnaughton: You may refuse, though.

The Chairman: It seems to me, if I may interject, Mr. Minister, that this reason for using "may" instead of "shall" should be that the moment you classify something in Part I instead of Part II of the Schedule, the public are getting full protection of this act—so by the procedures you then have, the public are not being exposed to any risk. On the point that you make, it seems to me, that that can be covered by inserting the "shall" but saying that he shall do this except in any case where a decision of the hazardous products board of review has been made in relation to this particular product.

Senator Flynn: It seems to me that it is because public opinion must be informed sufficiently to protect the real interest of a manufacturer, it is not because you can put a question in the house. Public

opinion may always be against the manufacturer, and he cannot find redress, even by having a question put to you in the house. He may not be able to get a redress through the board of review.

Senator Connolly (Ottawa West): Without contradicting Senator Flynn's point, because I think this is valid, it seems to me that the position on safeguards that the Minister referred to will also have the safeguards on the other side, on the lower level, arising out of the committee which Dr. James just mentioned. We ought to know Dr. James here, because he did a great job of work for us on a number of our inquiries.

If that particular committee has on it representatives of industry, and if there has been some consultation and advice, then I think that is an additional safeguard. What I was going to ask, to buttress further perhaps the point that Senator Flynn is making, is this: In the event of your setting up a board of review—which is an appeal from a decision that might—might, by the industrialist concerned—be conceived to be an arbitrary decision, would that be a departmental board, or would you set up the kind of board that would be knowledgeable in that particular instance?

Hon. Mr. Basford: This is one of the reasons why there is a board constituted for each case.

Senator Connolly (Ottawa West): Perhaps that answers the question. I think it answers my question.

Hon. Mr. Basford: My initial inclination would be to use the Restrictive Trade Practices Commission, but it may be that I could not use that commission. A lot would depend on the nature of the appeal requested, the nature of the product concerned. The act allows us to establish a board to hear that specific case.

Senator Connolly (Ottawa West): In other words, you are saying, Mr. Minister, that if you have to deal with matches then you might have to have a certain amount of know-how on that board. But if you are going to deal with life jackets, then you have a different kind of problem, and perhaps you require different kinds of people, so you have different kinds of boards.

Hon. Mr. Basford: Precisely, and this is why there is not a permanent board established under this act. It is established on an *ad hoc* basis, if I might say so, for each product. It is also for reasons that, as you will notice, honourable senators, the Minister of National Health and Welfare also has access to the Schedule, because he has certain concerns with health products. And he may add products. Some of those would require completely different boards than the sort of thing that the Department of Consumer Affairs is concerned with. If you were hearing evidence on the

jequirity bean, for example, you would have quite a different board than the one dealing with glues.

Senator Connolly (Ottawa West): I assume you keep close to the Minister of National Health and Welfare because a lot of the plans have arisen out of the use of hazardous products which have been imported on toys and other articles—the coloured ice balls for drinks—for example, that came from Hong Kong. How much help do you get from the Customs Department? Do you expect to get it from the Customs Department to stop these products coming in at the border?

Hon. Mr. Basford: Once something is listed in the Schedule, the customs points would be alerted to this.

Senator Connolly (Ottawa West): This is one of the functions that you would envisage?

Hon. Mr. Basford: I am told by the Health and Welfare officials that this now works, that they have good relationship in this regard, with products under the Food and Drugs Act.

Senator Connolly (Ottawa West): Do you need any help from them, from the Department of National Health and Welfare?

Hon. Mr. Basford: If something were added to the Schedule, I expect we would. I would anticipate that we would have the same relationship with revenue and with the customs officials as the Department of National Health and Welfare has.

The Chairman: I assume, Mr. Minister, that, as Senator Connolly says, you would appoint a knowledgeable board. That goes without saying.

Hon. Mr. Basford: Yes.

The Chairman: I therefore would feel that in the case of the person who feels he has been hurt, and who feels he should have a right to have his case discussed, that we should first make all those assumptions, that the board will be a proper board. I would expect that the Minister would do that. I think it is his duty to do that.

Hon. Mr. Basford: Senator Connolly was rightly raising the question that the board will be set up for each case, and that on the board there would be people who would be knowledgeable on that particular industry or for that particular product.

The Chairman: But it does not go to the question of whether I have a right of appeal or whether I am dependent on your discretion—and when I say “you”, I mean the Minister and not you personally.

Senator Connolly (Ottawa West): For the record, perhaps I should ask one more question, without prolonging the discussion. In the Minister's view, even though the word "may" is used here, do I understand that the right of appeal is there and is absolute and is *de facto*. There would be an appeal only because in your opinion a board is necessary in a given case.

The Chairman: Having a board is no reason for having to write out a notice of appeal. Under the bill the minister may request.

Senator Flynn: Would the decision be final? There is no recourse to the Exchequer Court? A decision of the board of review would be final, would it?

Hon. Mr. Basford: The board of review makes a report which may or may not be published, as determined by the board. If the board of review says the product is not hazardous, or these regulations are inappropriate, silly, or conversely that the regulations do not go far enough, the minister then ignores the report at his peril, it seems to me.

Senator Flynn: I understand that. I am speaking from the strictly legal point of view. We may not always have as good a minister as we have now.

Hon. Mr. Basford: Whether or not you have a good minister, he will be subject to the penalties of not listening to the board.

Senator Flynn: These are relative considerations.

Senator Connolly (Ottawa West): Should we not go back to the Chairman's point. Suppose you have a man who has a grievance and there is no board of review in existence. What is the machinery whereby he launches his appeal to a board of review which has not been set up? Does he request that a board be set up?

Hon. Mr. Basford: Yes.

Senator Connolly (Ottawa West): Then is it completely discretionary for the minister in the department to say whether the board will be set up?

Hon. Mr. Basford: Yes. The purpose of this is to avoid the necessity of having a whole series of hearings with regard to one product. If it were mandatory, each person who complained could file a request and launch an appeal. The right is given to any manufacturer or distributor. If we deal with a product, there can be ten manufacturers and 500 distributors. My purpose would be to have one appeal, one board of review sitting on that product and judging that product, whether in the opinion of the board it is hazardous or not and whether the regulations to deal with it are too stringent or not stringent enough, rather than having 510 appeals in that case.

Senator Connolly (Ottawa West): Certainly that is completely sensible.

The Chairman: That is why I suggested the exception. It occurs to me that there is nobody here from the Department of Justice, but as I understand it, in legislation referring to the Governor in Council, usually the practice is to say "may" instead of "shall". Very often in those circumstances "may" is given the interpretation of "shall". I would say from the way in which you have developed this, Mr. Minister, you would apply the discretion to do or not to do rather than interpreting "may" as "shall" where a person asks that you set up a board for consideration.

Hon. Mr. Basford: Yes, because I think it would be very undesirable to place upon me or on the Governor in Council the obligation to have 510 proceedings.

The Chairman: If there were 510 different proceedings, whether it is a burden or anything else, there should be provision there, and if it involves the same point I would suggest the simple way is to have one hearing which applies to all those cases.

Hon. Mr. Basford: That is right. This is what I can now do.

The Chairman: The point is that it is your discretion whether the order is referred to a hazardous products board of review or not; it is your interpretation of subsection (2) of section 9.

Hon. Mr. Basford: Yes.

Senator Macnaughton: I understand that all the members of the board of review are appointed by the minister.

Hon. Mr. Basford: Yes.

Senator Flynn: You mean the same people who have decided already? I do not see how you get a review.

Senator Connolly (Ottawa West): That is unlikely is it not?

The Chairman: Frankly, I would not look at it from that point of view. The minister would be impartial.

Senator Leonard: We are dealing here with subordinate legislation. Section 8 subsection (1), gives power by order to amend Part I or Part II, and section 8 subsection (2), simultaneously gives power to amend on the recommendation of the minister. We go through all the necessary procedures to determine that certain articles are dangerous or hazardous substances, and then we give somebody else power to determine that some other substance is of the same character.

This brings up the whole question of subordinate legislation. If it is so important to deal with this as an act of Parliament, then it seems to me we should deal with any other dangerous substance. If the Governor in Council may have to make a quick decision and add an article to the list, that should come back to Parliament, in my view, and should not have effect until such time as it is ratified by Parliament. That would be the real board of review.

Hon. Mr. Basford: I cannot agree, with all due respect. This is not a new approach, either with regard to hazardous products or with regard to other legislation. For example, the Food and Drug Act allows the Governor in Council to add certain drugs, to change the drugs from one schedule to another. The Agricultural Products Standards Act allows the Governor in Council to add foods to the act, processes to the act, packaging and labelling to the act. There is wide discretion to add or subtract materials covered by those two acts. Again I draw on foreign experience. In Britain the Home Secretary is allowed to deal with any products that may require labelling, packaging or construction features, and that power is far wider than this bill.

The Chairman: I did not understand the honourable senator to be objecting to the Governor in Council having powers.

Senator Leonard: The initial power. I agree with that. It is a question of whether subordinate legislation should come back and be ratified by Parliament. In this case, which is quite exceptional, these are the kinds of amendments to an act that ought to come back to Parliament in due course. There are some things that are purely regulatory. You are yourself setting up a committee, or providing by your rules for the review of all subordinate legislation. Consequently this will probably come before whatever you do set up. When you consider it worthwhile to set up even a board of review, it seems to me all the more important that you should consider whether or not this is the kind of thing that ought to be reviewed by Parliament.

Hon. Mr. Basford: The actions of the board?

Senator Leonard: No, no, the actions of the Governor in Council.

Hon. Mr. Basford: In what way? By tabling the Orders in Council?

Senator Leonard: By ratifying whatever the decision is by a subsequent bill.

Hon. Mr. Basford: I am not sure that the Parliamentary process is quite up to that, because, for example, under the Food and Drugs Act, if Parliament

had to deal with all the Orders in Council made under the Food and Drugs Act, it would take a great deal of the time of Parliament. If they had to deal with the regulations made under this act, if the regulations had to be confirmed by Parliament, it would be a very burdensome task, I think, for Parliament.

Senator Leonard: There are differences so far as legislation is concerned, but it strikes me in this particular case—where we have had a considerable amount of discussion as to just what are hazardous substances, as to what should be done about glue, and as to the question of giving a broad power to add to those—it certainly strikes me that it would be better that that be reviewed by Parliament for the future.

The Chairman: Parliament is making the first list.

Senator Leonard: That is right.

The Chairman: Therefore, the authority to add to it would be in the interest of the public. I fully support that. The question is whether it should be ratified.

Senator Connolly (Ottawa West): From a practical point of view, is the Minister in this difficult position that, suddenly, hazardous substances appear on the market and, in the interest of the public, he has to deal with them expeditiously? It seems to me that the Minister would have to have discretion to go ahead and put that on to the schedule.

The Chairman: We are agreeing to that, senator. Senator Leonard says yes to the initial authority to add this. We agree that this should exist, but we say at some stage that the exercise of that authority, and that classification should be reviewed by Parliament.

Senator Connolly (Ottawa West): In what way? By reviewing the regulation that was made? The Order in Council?

Senator Leonard: The regulation would have effect until confirmed by Parliament.

Senator Connolly (Ottawa West): Yes, ratification. That would not be burdensome. It might be time-consuming to Parliament.

The Chairman: There are more considerations than just the consumption of time, senator.

Senator Grosart: Mr. Chairman, I spoke on this bill in the Senate last night. I went a little farther than Senator Leonard has gone. I pointed out that clause 8 gives the Minister the power to repeal the act. I do not know whether any other act goes that far, but I think it is quite clear that this act does. He may delete all the items in Part I and Part II of the schedule which would mean the act is repealed. I suggest this is going

farther than any act that I have studied recently. I do not know whether the Food and Drugs Act goes that far. If it does, I would suggest that it would be merely another objection to this act that it is following that precedent. Parents sometimes tell their children not to follow bad examples. I do not think there is any justification whatsoever if this is objectionable, to say that this sort of thing is done in some other act—whether it is or not.

The Chairman: Do you agree that what is provided in section 8 is in your view properly there, and that there should be that authority?

Senator Grosart: No, I do not agree.

The Chairman: Then you disagree with Senator Leonard's point of view?

Senator Grosart: I, at the moment, will not judge whether I am agreeing or disagreeing with him. I am merely saying that, in making this statement, I am going farther than he went. I do not know whether he would agree with me or not. That is not for me to judge at the moment, Mr. Chairman.

However, I would point out that the Minister seemed to give the impression that the listings, say, in Part II, bleaches and so on, were a limitation on the power of the Minister. I suggest that there is no limitation whatsoever on his power, because under the act the hazardous product is anything that the Minister, at his discretion, puts into Part I or Part II of the schedule. There is no limitation whatsoever, therefore. A hazardous product is described as anything that is put into the schedule, Part I or Part II, and the Minister can put anything in that he wants, and he can take anything out that he likes.

The Chairman: The Governor in Council can do so on his recommendations.

Senator Grosart: All right, say the Governor in Council, although there is a reference here to Ministers, and I think we are all aware that the normal process is that the Minister uses the Governor in Council as the *modus operandi*. However, I am prepared to say the Governor in Council.

The Chairman: You might run into debate on that, if you say that the Minister uses the Governor in Council. It may be the other way round. That is, that you cannot have an Order in Council without the recommendation of the Minister.

Senator Grosart: I am not arguing that particular point. What is more important to me is the power that is given, whether it be to the Minister or to the Governor in Council, and, as Senator Leonard pointed out, we have the will of Parliament clearly expressed at the moment in the schedule, Part I. Parliament says

that these are the hazardous products. These are the things we say are hazardous products. The Minister can say that he does not care what the will of Parliament is, or was, on the day that this act was passed, and he can say that Parliament was wrong. He can say, "I am changing this. I am taking one out."

Now, that is the essence of my objection to the act as it stands. I am fully aware of the problem of acting swiftly, and I have great sympathy with those who are faced with it. Obviously, the department in certain cases must act swiftly. The Minister was asked if there was some other way. He thought not. That is an answer that never satisfies me. We hear today the common phrase, "There is no way." There is a much better axiom: "Where there is a will, there is a way." I suggest that there is a way here, if there is a will.

My suggestion is to adopt a certain formula, and if you will allow me to give it a name, I will call it the "Hayden Formula". It is a formula that I have seen you, Mr. Chairman, develop from time to time, and sometimes quite effectively, and I am thinking now of the deposit insurance bills.

I think it falls into the suggestion made by Senator Leonard that the Minister should be required to come back to Parliament in due course, and the Hayden Formula, as I understand it, would be that we should put a time limit on the effectiveness of the regulatory action, and I am quite sure that this would obviate the general feeling of public servants and Ministers about the slowness and cumbersomeness of the Parliamentary system. If the Minister or Governor in Council or Government, whatever way you like to take it, knew that what was done by regulation was going to lapse in time, the Minister would see that the amendment was brought before Parliament.

Here we are giving the Government a real incentive to come back to Parliament and to at least ameliorate the effect of this, which is a clear delegation of legislative power.

The Chairman: You are really agreeing, in effect, that section 8 is properly in the bill and that the Governor in Council must have that initial authority to do these things in the public interest. What you are saying is that some time thereafter Parliament should either ratify or amend or approve what has been done.

Senator Grosart: Or extend it.

The Chairman: Because this is what Parliament is doing now. It is approving the initial list.

Senator Grosart: In general, yes, Mr. Chairman, although I would have some reservations about giving the Governor in Council the power to repeal anything in Part I of the schedule.

The Chairman: I do not see any difference between repealing and adding.

Senator Grosart: I think there is a difference, with respect, Mr. Chairman. The difference is that here Parliament has specifically looked over the whole field of now known hazardous products and has said that these groups are hazardous. I think that should stay. That is the will of Parliament. Nobody is going to be hurt if there is some delay in bringing in one of those out from under Part I of the Schedule. Therefore, I say I agree with your interpretation of my remarks generally, except that I would make the additional reservation that the Governor in Council should not be allowed to repeal, in effect, a clear expression in statutory form of the will of Parliament at a given time.

Hon. Mr. Basford: Mr. Chairman, I am in a state of some confusion. During the last Parliament the Senate passed Bill S-22, after hearings in this committee. That bill did not get dealt with by the House of Commons, and it died when Parliament was dissolved. The Government had to decide whether to proceed with this measure, and it did so decide, and the matter was transferred from the Department of National Health and Welfare to the Department of Consumer and Corporate Affairs, and I revised the act and re-introduced it.

The revisions that have been made to the act are the addition of subparagraph (b) to section 8(1) which includes household, garden, and personal products, and the setting up a board of review. Those provisions were not in the former bill S-22. Apart from that, the scheme of this bill is exactly the same as that of the bill passed by the Senate during the last Parliament. So, I am now in some confusion.

The Senate approved the whole scheme of the act, and of the addition of things to the schedule, and their deletion. In fact, in the committee there was a great deal of discussion as to whether things could be moved from one part of the Schedule to the other. The whole scheme of the act was approved by the Senate, yet I have this morning got into trouble because of the board of review which I thought was a desirable addition to the act. I am, in a way, sorry that I did not leave out the board of review, and leave the matter as it was in the old Bill S-22.

It seems to me that this act is a great improvement, and is one that provides more protection to the public and to the industry than did the old bill S-22 which, as I say, was approved by the Senate after hearing in this committee representations by the Canadian Manufacturers of Chemical Specialties Association and the Canadian Paint Manufacturers Association. These organizations recognized the need for regulation, but they wanted to be consulted—and they will be consulted. They did not raise the point that they wanted a board of review in the hearings in this committee, but

I felt it desirable that there should be a procedure by which people could go before some board and have a fair hearing, or a judicial hearing, on regulations governing their products.

This is the kind of scheme envisaged and outlined when the former Bill S-22 was before this committee. It was outlined by the Director-General of the Food and Drug Directorate, who was then carrying the legislation, and was approved by the Dominion Council of Health as a very necessary measure that should be proceeded with expeditiously. It was said that this was the only proper way of dealing with a host of products that are on the market, or that may come on the market.

If we are not going to have this scheme of legislation then it will become necessary, as the need arises, to introduce a jequirity bean act, and then a children's nightdress act, and then a household fluids act, and so on. This is the experience of the United States. They started with a minimum piece of legislation, and then got to where we are now by having a general piece of legislation.

The Chairman: But, Mr. Minister, this is not the objection, as I see it. The objection is that every power you are asking for in the bill initially, or that you want to add or take away, you can obtain by means of an order in council. All that is being said is that thereafter at some stage Parliament should have the opportunity of saying whether it approves of that, or whether there should be any change. It does not interfere at all with the administration. It does not interfere at all with the public interest. The public interest is protected in the meantime. It does not disturb the scheme of the act.

Senator Leonard: There are things here that were not in the previous bill. Is that not so?

Hon. Mr. Basford: Paragraph (b) of section 8(1).

Senator Leonard: The glue, for example.

Senator Grosart: May I just comment on the minister's remarks?

The Chairman: I think the minister wants to say something in answer to Senator Leonard.

Hon. Mr. Basford: I just want to say that the real addition is paragraph (b) or section 8(1). I think the glue was in the old Bill S-22.

Senator Leonard: I accept that.

Hon. Mr. Basford: The schedule has not been changed.

Senator Grosart: I was going to say that the minister appeared to be answering my objection, but I

would make a further comment. I agree with him that this is a better bill than the one that was before the Senate during the last Parliament. I can understand it when the minister says he is confused—perhaps “frustrated” would be a better word—in that, certain principles having apparently been approved, he now comes back before the Senate committee and discovers that somebody wants to re-open the whole matter. I do not think we have to apologize for that. Our whole system of legislation is based on the fact that we stage the various processes, and one of the reasons for that is to give people like myself, who need more time than others to find out what may be objectionable in an act, an opportunity to say something. I do not think I have to apologize for the fact that it took me a long time to find out that there is something objectionable here. I am not a lawyer, and I did not take the time to read all the acts.

Incidentally, I am not a member of this committee, I am sorry to say. I am speaking as a senator, and not as a member of the committee. I am not quarrelling about the Board of Review. All I am saying is that there should be—I am in agreement with Senator Leonard here, and, perhaps, the chairman—some control on the complete, and now uncontrolled, legislative power that is given to the Governor in Council under this act. I said last night, Mr. Minister—and you may read it in *Hansard*—that I was not concerned about the administration of this act under the present minister.

Senator Kinley: Mr. Chairman, I think this bill is a technical one. It needs technical knowledge. If the minister makes a decision, or even if the Governor in Council makes a decision, then that decision must be made on the advice of advisers who have knowledge of the situation, and who are the people who will decide. If the minister is going to delete or add something to the schedule then, no doubt, there will be public interest in that, and it will be done on the advice of his advisers. Now, if he is going to have a board of review, and he appoints the same technical advisers to the board of review, then what chance have we got? We have no chance at all.

I have been following this thing. I have been in the drug business for 30 years, although I am not in it now. I do have some knowledge and experience of the drug business. I remember that in the Exchequer Court, there were lawsuits that cost many thousands of dollars proving that Coca-Cola and Pepsi-Cola were not the same thing. There are many industries in this country that need these things for certain purposes. Now, is there any exception for a purpose that it would be needed, and that it could not be given to the general public?

I heard mention the other day, Mr. Chairman, of free wheeling, and I might say that there is a lot of free wheeling in this bill. Since I came to Parliament

30 years ago I have been listening to debates on legislation. We have made laws, and then when we got down to the point of having people interpret them we have found there is an order in council that emasculates the law. I think that we would want an independent body to decide on a review.

Senator Carter: Mr. Chairman—

The Chairman: May I add just one thing, Senator Carter. The minister was commenting on the fact that we did not raise the question of some check on this arbitrary power last year. Well, the minister knows very well that we did discuss it, and decided to let it go. That is not unusual. I do not have to name the things that have happened, but I am sure the minister will recall, and the senators will recall, what I am referring to. I have often seen—and in the not too distant past—bills introduced in one house of Parliament being substantially amended or proposed to be amended by the very people who sponsored the original bill. So we have at least that much power. I do not think we misled the minister.

Hon. Mr. Basford: That is why, Mr. Chairman, I started the bill in the Senate, knowing that it would get careful consideration.

Senator Molson: We are not always consistent, because when we had the Department of National Health and Welfare hearing here, we were unable to find any definition for promotion or advertising in Bill S-21; but in Bill S-22 it came out here without any difficulty whatsoever.

The Chairman: That is why we move around.

Senator Flynn: We are trying to improve all the time.

The Chairman: And ourselves, too.

Senator Flynn: That is what I mean.

Senator Carter: Mr. Chairman, I have been trying to think out the application of the principle enunciated by Senator Leonard and Senator Grosart. The principle is that Parliament is supreme; and it is my understanding of it that any law made by Parliament could be changed only by Parliament, that that is the supremacy of Parliament.

This bill that we have now already has classifications of substances which Parliament has approved. Consequently, any subsequent changes in the Schedule, anything added or deleted, should also go before Parliament in time for approval. But if we start now to apply that principle, then we have to put in this bill somewhere a time limit on the decision of the minister, or a time limit in which the bill, with the

changes in it, would go back to Parliament for approval.

Once you start putting a time limit in the bill, then what does the minister do? He must apparently bring this bill to Parliament long before the date of expiry in the bill—in case by chance there should be a dissolution or a summer recess or something like that when this date falls due.

The Chairman: That is readily taken care of. We have existing legislation in which you have this provision many times, about having to bring something back to Parliament. There must be a report, the orders in council must be tabled, you have all sorts of other things. The language is usually the same—that is, if the Parliament is in session, within sixty days, or 120 days, from the opening of Parliament; or, if it is not in session, then it is when Parliament resumes.

Senator Carter: Would you make provision for the minister to exercise his powers—

The Chairman: Right away.

Senator Carter: All the time. There would be no disruption of the minister's power at any time?

Senator Leonard: I think it would be better to order it in the bill itself.

The Chairman: I think so, too.

Senator Burchill: May I ask a question?

The Chairman: Certainly.

Senator Burchill: Is the minister obliged to accept the recommendations of the board of review?

The Chairman: No.

Hon. Mr. Basford: The reason for that is principally a health reason. It is more the considerations that would apply to the Department of Health and Welfare than to the products I am concerned with, in that the Minister of National Health and Welfare has a statutory obligation to be concerned with the health of the public. He will be exercising his influence on this bill and adding things to the Schedule. In fulfilling his obligation to the health of the public, he cannot be bound, I think. Now, if he has acted in an arbitrary way or in an unnecessary way, the board of review will point that out—to the minister's penalty, I suspect. But I do not think that you can bind the Minister of Health to be bound by the recommendations of the board.

With regard to the matter which has engaged us here, about regulations, I could not here and now, at this point, consent to an arrangement by which any

orders passed under the act would have to be confirmed by Parliament. This is a new procedure, I think, to me.

Senator Leonard: To put it the other way—a certain length of time?

Hon. Mr. Basford: I could not consent to that, without discussion with the Department of Justice, because of problems there could be if they had to be confirmed. This has very far reaching implications, and Parliament could well spend a great deal of its time confirming regulations. I would like to suggest, senator, that the House of Commons has a committee established to consider these very issues.

Senator Leonard: Obviously, the addition or deletion of a substance as being hazardous or non-hazardous is an important thing, and any amendment to that effect, it seems to me, ought to have effect for a limited period of time, so that Parliament could review it.

Senator Flynn: May I suggest that we could adjourn the consideration of this bill to give the minister time to consult on these two points that I have raised. There is the question of referring to Parliament any additional deletion to the Schedule. There is the second point, the problem of the board of review. I think anyone should be entitled to have his request referred to the board of review, if the point has not already been decided or if a board has not already considered the point. If it is already considering the point, it would be only a matter of referring the request to a board already in existence.

The Chairman: These are two points where we are asking the minister to consider. There is one other thing I would like to ask the minister. Do you feel, or do your departmental officers feel, that the authority you have taken in relation to inspectors and in relation to the analyst will enable you to move quickly enough, in certain circumstances?

Hon. Mr. Basford: I was intending to make a slight amendment with regard to the definition of analyst.

The Chairman: Do you think that in relation to the inspector you have it broadly enough now, that if you need an inspector so quickly, that you have to take some person in a local area, that you can do what is required to make the inspection?

Hon. Mr. Basford: Yes, the Department of Justice advises me on that, too.

The Chairman: Well, I am putting the question to you.

Hon. Mr. Basford: Yes.

The Chairman: While the minister will give consideration to these two points, are there any other points that you would like to ask him now?

Hon. Mr. Basford: I am not quite sure that I said that. I certainly said I could not consent to it, without advice from the Department of Justice.

The Chairman: I was not asking you to consent: I was asking you, do you want any time to consider it?

Hon. Mr. Basford: My own view was that I do not think it would be necessary. I certainly could never recommend, and would not recommend, that the orders be only made for a little while or for a period of time and then had to be confirmed by Parliament or they expired. I think that creates tremendous difficulties. It is conceivable that something could be added that was hazardous, dangerous or poisonous, and for some reason Parliament could not get around to dealing with it, and then it would be legal to sell that.

The Chairman: That of course is not what we are asking.

Senator Leonard: Up until this bill is passed, that is the situation we have had in the past.

Senator Flynn: If Parliament has to deal with that, it would be certain that it would deal with it as it does in other cases. I do not think the minister needs to be afraid of that situation.

Hon. Mr. Basford: But in what other cases does Parliament confirm regulations?

Senator Flynn: It is in many other acts that we have. When we know that we have to deal with a given matter before a certain date we do it. This is not the first time. I know it is not the same thing, but we dealt with the Customs Tariff because it had to come into force on January 1, 1969; we dealt with the legislation required because of this delay within the period provided.

The Chairman: In what we are suggesting we are not limiting the power of the minister in any way to get action immediately by order in council, for the Governor in Council to put another substance in Part I or Part II or to take one out. All we are suggesting is that at the next sitting of Parliament what was done under the order in council should be submitted to Parliament. That is all we are asking. If Parliament does not think it is important enough to deal with, that is another question.

Senator Connolly (Ottawa West): If the deletion or addition had to be approved ultimately by Parliament, as I understand the discussion here the deletion or

addition would remain in effect until Parliament had dealt with it.

The Chairman: Yes.

Senator Connolly (Ottawa West): From a practical parliamentary point of view, what would be required would be an amendment to the act by way of changing the schedule.

The Chairman: That is right.

Senator Connolly (Ottawa West): I take it that this would be a bill that would have to pass both houses. I suppose when Senator Leonard talks about the substitution of Parliament for the board of review, he would say that if there is an aggrieved person in Canada affected by this regulation that aggrieved person can come before one of the parliamentary committees—certainly it could come before his committee—and make his case. In saying that, I do not think what we are doing is attempting to protect the people by putting a mark on hazardous substances that are dangerous to the public, but there may be a legitimate grievance, for example, in the case of someone making life-jackets where certain standards are a little too high. Perhaps this is a bad example.

It is the kind of thing where there could conceivably be an area of disagreement and a place of grievance. I cannot make up my mind whether this is the right way or whether the board of review is the appropriate way, but I do think it is worthy of consideration by the Department of Justice.

The Chairman: The board of review provisions do not deal with the question Senator Leonard raised, which is the question whether if this bill is passed by Parliament . . .

Senator Connolly (Ottawa West): Accepted in a practical way. Probably if the board of review decided in a certain area the power would still remain with the Governor in Council to amend the act.

Senator Phillips (Rigaud): Could we consider the suggestion that deletions or additions shall remain in force for a period not to exceed two years, so there would at least be a time within which deletions or additions would remain effective and provide a time at the end of which it would require parliamentary sanction?

Senator Connolly (Ottawa West): With all respect to Senator Phillips, I do not think it is an arbitrary time limit to suit a case like this where you are dealing with matters that might affect the health or welfare of the public if it is a hazardous substance.

The Chairman: The order is in force the minute it is made.

Senator Connolly (Ottawa West): That is right.

The Chairman: So the public is being protected.

Senator Connolly (Ottawa West): If there is a time limit of one, two or three years, as the minister pointed out . . .

The Chairman: I would prefer to say the next sitting of Parliament if Parliament is not in session.

Senator Connolly (Ottawa West): Suppose you have an election within two years.

The Chairman: Then the order goes on.

Senator Connolly (Ottawa West): Under Senator Phillips' suggestion.

The Chairman: No, under what we have been suggesting.

Senator Connolly (Ottawa West): That is what I say. I go with the minister, that the addition or deletion from the schedule should remain until there is parliamentary action regardless of how long it might take.

Senator Flynn: Oh no.

The Chairman: No, it has to be the next session of Parliament.

Senator Phillips (Rigaud): It has to be dealt with by Parliament; it has to be put before Parliament, and Parliament should deal with it at that session or in the next session.

The Chairman: If Parliament does not deal with it then the order has gone.

Senator Phillips (Rigaud): Obviously the deletion or addition in respect of the schedule in question should be submitted to Parliament for ratification within a period not later than a certain date.

Senator Connolly (Ottawa West): Oh yes.

Senator Leonard: I think Senator Phillips' suggestion is the way to deal with it. A minister could bring it along inside three months if he wanted to. In the meantime, two years would give ample opportunity to be satisfied that the action had been right or that it should be changed.

Senator Connolly (Ottawa West): That was my objection.

Hon. Mr. Basford: I am not sure precisely what the committee means by "submit to Parliament". If it

means simply laying the order in council on the table, that is one thing. If it means debate by Parliament, then it means a great many other things.

The Chairman: It means amendment to the legislation.

Hon. Mr. Basford: I know you want to amend the act to provide that the orders made changing the schedule be submitted to Parliament. What I would like to know is what you mean by "submit to Parliament". Is it laying on the table or debating it?

Senator Leonard: I mean a bill amending the act, changing the act to conform with an amendment made by the Governor in Council.

Hon. Mr. Basford: We are dealing here with a great many technical matters. Senator Connolly rhetorically raised the question of where people would get the better hearing. I would point out that item 3 of Part I of the Schedule refers to:

Liquid coating materials and paint and varnish removers for household use having a flashpoint of less than 0°F as determined by method 3.1 of Specification 1-GP-71 of the Canadian Government Specifications Board.

The flashpoint of paint is an extremely technical question. There are all sorts of different methods of determining flashpoint; there are all sorts of different specifications. I cannot speak for the Canadian Paint Association, but if there were to be a change in that specification I would, with all due respect and deference, suggest that they would get a better hearing in front of a specialist board of chemists, engineers and laboratory people who knew about the specifications of paint, and about flashpoint, than they would from a parliamentary committee. I do not think Parliament is designed to deal with method 3.1 of Specification 1-GP-71.

Senator Leonard: Parliament did that.

The Chairman: Parliament enacted it.

Hon. Mr. Basford: You may make some change in the flashpoint. We are going to deal with the flammability of textiles. There are eight different methods of determining flammability being considered by the Canadian Standards Council or by the standards people. I have been in Parliament for five years and I have never sat on a committee that would be able properly to consider whether to use one method of determining flammability rather than another method. This is surely an area in which the scientists are involved, not the politicians. These are the kinds of regulation that we shall have to be passing under Part I, whether to amend the standard, whether to change the flashpoint, whether the lead content

should be .5 or .7. Is Parliament to debate each of these changes?

The Chairman: I do not want to get into an argument, but I want to state what our position is. If the Minister, on the recommendation of his advisers, decides that item 3 in Part I should be broken into smaller parts, or the standard should be changed, then the authority we agree would be in the act that the Governor in Council, by Order in Council, would delete or amend so as to reflect that. Now, the Minister does that on the advice of his responsible officers and members of the public who are experienced in this business.

The same people are available to Parliament and the Committees of Parliament and are used there all the time. We used them here the last time we considered this bill. It is not a question of whether Parliament is better able or the Minister is better able, but it is a case of the Minister having the best advice possible and then disclosing that advice to Parliament. If there is any more advice, Parliament will get it. These are the legislative processes, and I do not see that we should interfere with them at all.

Senator Macnaughton: We are all very sympathetic with the Minister and want to help him get through his bill, which is very much needed. But there are two points we have raised this morning which need further consideration. Is there a possibility of a short adjournment so that further consideration can be given to these points? I understand the Minister's position, but there is such a thing as our duty to Parliament as we see it. If we do not agree with the Minister, that is just too bad, but we have our duty first.

The Chairman: We can adjourn until two o'clock, or 2.15, or we can adjourn until the Senate rises later today. If you want action, we will give it to you.

Hon. Mr. Basford: Fine. I would like to consult, but, first, I would like to know precisely what the suggested amendment is.

The Chairman: There has not been a motion yet. Senator Phillips (Rigaud) made certain suggestions and then revised them. We are still in that flexible stage of discussion and we invite you to join in. Shall we adjourn discussion of this bill until later today?

Senator Connolly (Ottawa West): Perhaps that is too fast for the Minister, Mr. Chairman. He has to consult with the Department of Justice and with his own officials. He may want to look at this record. Although he has heard it, he may still want to show it to people who are concerned.

The Chairman: Well, we will be sitting again. We will be sitting later today. We could sit some time tomorrow. We can sit next Wednesday. We will be here next Wednesday, in any event. You may take your choice of the times. Suppose we adjourn the consideration of this bill until the call of the Chair. The moment the Minister indicates that he is ready, then we can meet.

Hon. Mr. Basford: That is fine.

The Chairman: Then consideration of this Bill S-26 is adjourned to the call of the Chair. Is it agreed?

Hon. Senators: Agreed.

Whereupon the committee proceeded to the next order of business.



First Session—Twenty-eighth Parliament
1968-69

THE SENATE OF CANADA
PROCEEDINGS
OF THE
SENATE COMMITTEE
ON
BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 18

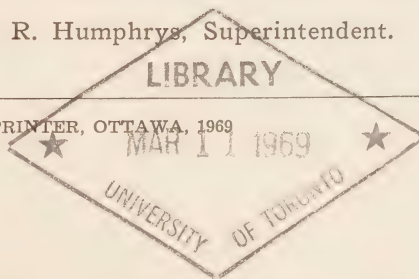
WEDNESDAY, FEBRUARY 12th, 1969

Third Proceedings on Bill S-17,
intituled:
"An Act respecting Investment Companies".

WITNESS:

Department of Insurance: R. Humphrys, Superintendent.

THE QUEEN'S PRINTER, OTTAWA, 1969



THE SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Lang
Aseltine	Desruisseaux	Leonard
Beaubien	Gelinas	Macnaughton
Benidickson	Giguère	Molson
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Inman	Welch
Connolly (<i>Ottawa West</i>)	Isnor	White
Cook	Kinley	Willis—(30)

Ex officio members: Flynn and Martin

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, January 22nd, 1969:

"Pursuant to Order, the Senate resumed the debate on the motion of the Honourable Senator Desruisseaux, seconded by the Honourable Senator Sparrow, for second reading of the Bill S-17, intituled: "An Act respecting Investment Companies".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Desruisseaux moved, seconded by the Honourable Senator Sparrow, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, February 12th, 1969.

(19)

At 11.35 a.m. this day the Senate Committee on Banking, Trade and Commerce resumed consideration of Bill S-17, "An Act respecting Investment Companies".

Present: The Honourable Senators Hayden (*Chairman*), Beaubien, Benidickson, Blois, Carter, Connolly (*Ottawa West*), Croll, Desruisseaux, Flynn, Hollett, Inman, Kinley, Leonard, Macnaughton, Martin, Molson and Willis. (17)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The following witness was heard:

DEPARTMENT OF INSURANCE:

R. Humphrys, Superintendent.

At 12.05 p.m. the Committee adjourned consideration of the said Bill until Wednesday, February 26th, 1969, at 9.30 a.m.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

THE SENATE

THE SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

EVIDENCE

Ottawa, Wednesday, February 12, 1969

The Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-17, respecting Investment Companies, met this day at 11.30 a.m. to give further consideration to the bill.

Senator Salter A. Hayden (Chairman) in the Chair.

The Chairman: Now we come to Bill S-17. Perhaps we are not ready this morning to proceed further with consideration of this bill at the moment. I had hoped that we would have submissions from people who wished to appear. We have had some submissions but a number of them have gone firm for the 26th February and afterwards. One reason for our hesitation in choosing an earlier date is the question of whether or not the Senate will be sitting next week. That apparently has not been determined as yet.

When we go through the bill clause by clause, which will be the next step, I would personally prefer to do it with Mr. Humphrys and representatives here so that we could correlate the objections and the submissions. If we were to start the clause by clause consideration today it would mean that we would be repeating it to a great extent at a later date. However, if that would embarrass any person here today and who wishes to make a presentation that I am not aware of, we will certainly hear him.

Senator Connolly (Ottawa West): Mr. Chairman, I wonder whether the committee would allow me the time to ask a few questions of a general character with respect particularly to acceptance companies which I dealt with in the speech I made on the bill. This is not clause by clause consideration really and it would not take me very long to do it while Mr. Humphrys is here. As a matter of fact I have told him in a general way the kind of questions I wanted to ask. Would it be agreeable to the members of the committee if I did that now rather than going into it at a very crowded meeting

the next time? It will take about three minutes to ask the questions.

The Chairman: Let us say 10 minutes. Is the committee agreeable? We will be going over the points you raise again, but I am in the hands of the committee. It is up to them to decide whether or not they want to do this this morning. Usually when a senator wants to ask some questions we say "Yes, go ahead."

Senator Beaubien: I agree with Senator Connolly, and I think he should go ahead.

Senator Connolly (Ottawa West): Mr. Humphrys, you remember the speech I made in the Senate when I talked about companies generally known as acceptance companies and the Porter Commission relating them to real banks. I called them merchant banks, but I realize that they do not qualify for that term under the definition of merchant banks as that term is understood in European practice. They are perhaps industrial banking companies.

I also suggested that first of all in a general way it might be appropriate to deal with this type of institution in a separate section of the bill, and I would like to get your views on that point. I am not going to re-read the definition of the company because it is defined in general in the Ontario Securities Commission definition—101—67—acceptance companies. Simply to save time, I will not read that, but I know very well that Mr. Humphrys knows what that definition spells out and what in fact these companies do. What I proposed was that these companies might be dealt with in a separate section of the act, but they might be made subject to the appropriate sections of the Bank Act. I list for the sake of the record section 29 dealing with "Non-current loans", section 62 and section 63, annual statements; sections 64 to 68 dealing with powers of Inspector General; sections 103 to 107, and 152 and 153 dealing with returns, and sections 139 and 140 dealing with inspection.

I suggested certain requirements, because, as I understand this industry, they do not

want to avoid any of the inspection requirements provided for banks—they feel there is better confidence established if, in the mind of the investing public, the restrictive provisions of the Bank Act should apply to them. Therefore the requirements on capital investments should be the same as are required of the chartered banks; that is, that they report forthwith, as the chartered banks are required to do, all loans and investments in excess of 5 per cent of the capital and reserves to the Inspector General of Banks; that they maintain reserves of, say, 12½ per cent of their short-term liabilities, which I understand is acceptable within the industry, and that the credit of last resort should be provided either by the Bank of Canada or by some other appropriate Government agency.

I also added that provincially incorporated acceptance companies which comply with these requirements should be entitled to register federally. We used this device in the Deposit Insurance Act, if you will recall. We provided there, in section 16, a formula whereby a provincial body could join the federal club, and by section 25, a formula whereby they could be excluded from the federal club.

Now, I realize that if these proposals are acceptable that you, the Superintendent of Insurance, would not have the supervision and control of these organizations. They would in effect become “near banks” and be subject to the proposals made for them in the report of the Porter Commission.

I should mention here that most of these companies, because of the amendments made to the Bank Act at the last revision, are competitors of the chartered banks, but they have to have their reserves pretty well wholly in the hands of the chartered banks. Thus they are dependent to a large extent for their credit resources on their competitors.

That is the general character of the proposal that I made. I wonder if at this time you could comment upon it.

The Chairman: Are you proposing for consideration a separate part in this bill or a separate act?

Senator Connolly (Ottawa West): Well, I am really indifferent about that. I think the industry would want a separate part rather than a separate act, because a separate act would take too much time to pass. If it were to speed up the legislative process to accomplish this purpose, I would say, do it by a separate section and do the legislating in respect of the appropriate sections of the

Bank Act by reference to the Bank Act rather than by spelling them out.

The Chairman: Mr. Humphrys, do you want to take time to consider this, or are you ready to give your views now?

Senator Connolly (Ottawa West): I did mention this to Mr. Humphrys about a week ago.

Mr. Humphrys: I will attempt some comment, Mr. Chairman, honourable senators. The breadth of the question and suggestion is such that it involves policy matters that are very substantially beyond those that are dealt with in the present bill. Therefore, I feel a little hesitant about commenting on it. I think I would have to say that I am giving my own personal reaction.

Senator Connolly (Ottawa West): I appreciate that. I would not want to embarrass you by asking you to comment on policy, which I would expect the Minister to do.

Mr. Humphrys: Yes, senator. I think that the ideas that Senator Connolly put forth in his speech before the Senate and which he has outlined this morning are very interesting. They might well provide a kind of structure that is suitable for organizations in this type of banking business. It is an aspect of banking that has not been specifically defined or distinguished in Canadian law or financial institutions. But we have seen it grow up in the development of the financial community, particularly in the post-war years.

In commenting specifically on the proposals, we face again the problem that has been referred to in earlier hearings on this bill: that we simply have not as much knowledge and information as we need concerning companies that are in the financial-intermediary business in one aspect or another. This has hampered us in attempting to arrive at specific definitions of the kind of companies that should be brought under this piece of regulatory legislation; it has hampered us in proposing specific rules or regulations or guidelines that might be appropriate for various types of companies; it has hampered us in making recommendations to the Government as to more specific legislative enactments that would apply to certain classes of companies. Part of the rationale of this bill—perhaps the principal rationale at this stage—was to establish a flow of information and a focus whereby the companies concerned could have their voices heard in the

Government organization and where the Government could turn for up-to-date and reliable information on the various types of companies that would be concerned.

In the absence of that, it is very difficult to propose legislation of the precision that you have outlined for certain types of companies.

Just to take one illustration, the question of the emergency liquidity facilities, or as it is commonly called "the lender of last resort". Companies that we commonly think of as finance or acceptance companies have raised this question from time to time. It was referred to also in the Porter Report.

There are, however, a number of other companies in the financial intermediary field which also would very much like to have better facilities than now exist for "lender of last resort".

I think the adoption of the Deposit Insurance Act created a vehicle that could be used in extreme emergency as respects companies subject to it, but it was not intended or designed to fill the place of a more or less normal lender-of-last-resort facility.

Also I would like to comment that to some extent Government policy was determined on the recommendations of the Porter Commission in this regard, when the Bank Act was amended two years ago. Evidently, it was thought that these particular recommendations should not be picked up at that time. I do not know and I would not presume to say whether it was a firm negative decision or one based on a time factor rather than anything else.

Senator Connolly (Ottawa West): They may have had enough to do dealing with the chartered banks.

Mr. Humphrys: In proposing this piece of legislation the idea was to start this flow of information. It was put with the Department of Insurance because the responsibilities of that department are in the field of supervising financial institutions of a wide variety. We already supervise mortgage loan companies, which are a kind of broad investment-type company principally oriented towards mortgages. We have a staff of inspectors and administrative machinery that make it possible to graft the administration of an act such as this on to our department.

The Inspector General of Banks operates with very limited staff, and there is no field staff for this at the present time, so it would

be rather difficult to put this kind of responsibility on him in any sudden way.

Senator Connolly (Ottawa West): And perhaps duplicate staff.

Mr. Humphrys: Yes. I do not think one should assume from the pattern of this legislation that it necessarily fixes indefinitely the supervisory or legislative pattern for the companies that may become subject to it.

One of the things we wanted to do was to be in a position to give better advice to the Government as to appropriate legislative structure and supervision for different types of companies, and it may well be that we need some expansion and modification of the concept of our banking legislation to fill the position you have described that might be appropriate for a type of industrial bank or merchant bank.

It might also be we need some modification of our banking legislation to cover a savings and loan type of organization, where the organizations are more admittedly in the savings bank business and more directly oriented towards mortgage lending.

We see the Quebec Savings Bank Act is now an act of general application, and if the bill to amend the charter of the Quebec Savings Bank passes through Parliament, the Quebec Savings Bank Act will remain being applicable to one institution only.

We have the Loan Companies Act which goes part way in the same field. Some accept deposits, provide checking facilities, make mortgage loans, and offer other facilities. They are not all that different from a savings bank.

Another stage is the stage you have described, where you get to an organization that is not taking deposits but is raising money by short-term paper, and is not making personal loans but industrial loans and equipment financing, more of the type of a merchant bank. So, there are various stages of organizations which will probably have to be sorted out or should be as we develop our legislation.

Senator Connolly (Ottawa West): The comment I would like to make on that is this. As you say, this industry, which does the acceptance company work, is expanding constantly and becoming a very large part of the financial organization within the private sector, and it seems to be a very special category. We have had before us briefs dealing with industrial holding companies like

Massey-Ferguson. We have had briefs from Dominion Textile, and so on—sometimes not briefs, but letters. They have certain problems, but here you have a clear-cut industry, that is well defined and understood, that would like to see this kind of legislation, with certain modifications perhaps, applicable in it, particularly in a separate section. Is it not better to have it in legislative form rather than in regulatory form, so that from the point of view of the investing public they know exactly where these companies fit?

Mr. Humphrys: I would agree with you in principle, Senator Connolly. I do not feel myself at this stage that I could properly make recommendations to the Government with precision on the matters you outline in your comments. We have in this legislation refrained from any specific recommendations on the grounds that we must know more before we can really recommend what rules would be appropriate, either in the form of regulations or legislation, for companies in the acceptance field or any other fields. We would like to be in a position, if we go ahead with that procedure at some time, to know what companies are in the field, what variety exists within the class of companies generally called finance or acceptance companies, and what rules would be appropriate. I could not recommend now whether, say, 12 per cent as a liquid reserve would be good or not.

Senator Connolly (Ottawa West): No, and I could not either. I used that figure because it seems to be reasonable.

Mr. Humphrys: Even in the Ontario act, where they define a finance company, it ends up with, "and a company designated by the Director as a finance company". They have certain descriptions, and then there is that general provision. I do not know whether that is a satisfactory answer.

Senator Connolly (Ottawa West): It helps a good deal, because there will be representations from some of the companies in this sector of the industry, and perhaps after hearing them and the representations that they make about the peculiar problems, this committee might make the recommendation that they should perhaps be dealt with in a separate part of the act. I do not think I need stress that point further. I thought the committee would consider this bill much earlier this morning, and it is now getting rather late. I also wanted to talk a little about representations we have had from some

of these holding companies like Massey-Ferguson and a few others.

The Chairman: All I want to add before we adjourn is that we have had communications from about 21 different organizations and individuals. We have had quite a number of submissions. We have had positive statements from about 8 or 10 that they will appear. We have maybe a couple of fence-sitters who apparently have not made up their minds which side of the fence they want to fall on.

Senator Connolly (Ottawa West): Or whether they want to come.

The Chairman: Yes. Now, we are sending to each one of those persons a copy of the proceedings of this committee. Before I close the meeting today I want to make the statement that on February 26, when we will sit again in connection with this bill, all those who wish to make representations should make up their minds, and be prepared to attend that meeting. If they attend then we will sit in the morning, in the afternoon when the Senate rises, and again in the evening, if necessary, in an endeavour to enable them to complete their submissions that day. If that is not possible then the committee will meet again the next morning.

I cannot say now what time will be available after that, because we may want to go into our own conferences and consultations in the event that we think, as may appear now from some of the things that have been said, that there should be changes made in the form and substance of the bill as against what we have here.

I am making that statement now so that all those who have submissions to make will know that the deliberations of this committee are not like Tennyson's brook.

Senator Connolly (Ottawa West): No. I think that is right. I do not know whether I am right or wrong, but I have heard that this bill is something of a trial run at this type of legislation, and whether it finally gets passed by Parliament at this session is somewhat problematical.

The Chairman: I think it should be crystallized in some form that we consider acceptable, because that will be of great use in a subsequent session.

Senator Beaubien: Mr. Chairman, did you say we shall meet at 9.30 on the morning of February 26?

The Chairman: Yes, 9.30 on February 26. I should tell you that it is quite likely that we may sit again tomorrow morning in order to deal with a bill that may be referred to us this afternoon.

Senator Beaubien: But we will deal with Bill S-17 at 9.30 a.m. on February 26?

The Chairman: That is right.
The committee adjourned.



First Session—Twenty-eighth Parliament

1968-69

THE SENATE OF CANADA

PROCEEDINGS

OF THE

SENATE COMMITTEE

ON

BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 19

WEDNESDAY, FEBRUARY 12th, 1969

Second and Final Proceedings on Bill S-26,

intituled:

"An Act to prohibit the advertising, sale and
importation of hazardous products".

WITNESSES:

Department of Consumer and Corporate Affairs:

The Honourable Ronald Basford, Minister.

Department of Justice: D. S. Thorson, Associate Deputy Minister.

REPORT OF THE COMMITTEE

THE QUEEN'S PRINTER, OTTAWA, 1969

THE SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Lang
Aseltine	Desruisseaux	Leonard
Beaubien	Gélinas	Macnaughton
Benidickson	Giguère	Molson
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Inman	Welch
Connolly (Ottawa West)	Isnor	White
Cook	Kinley	Willis—(30)

Ex officio members: Flynn and Martin

(*Quorum 7*)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, February 4th, 1969:

“Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Carter, seconded by the Honourable Senator McGrand, for the second reading of the Bill S-26, intituled: “An Act to prohibit the advertising, sale and importation of hazardous products”.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Carter moved, seconded by the Honourable Senator Eudes, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.”

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

Wednesday, February 12th, 1969.
(20)

Pursuant to adjournment and notice the Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to *resume* consideration of Bill S-26, "An Act to prohibit the advertising, sale and importation of hazardous products".

Present: The Honourable Senators Hayden (*Chairman*), Beaubien, Benidickson, Blois, Carter, Connolly (*Ottawa West*), Croll, Desruisseaux, Flynn, Hollett, Inman, Kinley, Leonard, Macnaughton, Martin, Molson and Willis.—(17)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel; and R. J. Batt, Assistant Law Clerk and Parliamentary Counsel and Chief Clerk of Committees.

The following witnesses were heard:

Department of Consumer and Corporate Affairs:

The Honourable Ronald Basford, Minister.

Department of Justice:

D. S. Thorson, Associate Deputy Minister.

AMENDMENTS:

The Honourable Senator Carter moved that subclause (b) of clause 2 be deleted and a new subclause substituted therefor. The question being put, the motion was declared *carried*.

The Honourable Senator Carter moved that the heading immediately preceding clause 4 be amended.

The question being put, the motion was declared *carried*.

The Honourable Senator Carter moved that a subclause (3) be added to clause 4. The question being put, the motion was declared *carried*.

The Honourable Senator Leonard moved that a subclause (3) be added to clause 8. The question being put, the Committee divided as follows:

YEAS—9

NAYS—3

The motion *carried*.

The Honourable Senator Carter moved that subclauses (1), (2) and (3) of clause 9 be deleted and new subclauses substituted therefor. The question being put, the motion was declared *carried*.

Note: The full text of the above amendments can be found by reference to the Report of the Committee immediately following these Minutes.

Upon Motion, it was *Resolved* to report the said Bill as amended.

At 11.05 a.m. the Committee proceeded to the next order of business.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

Wednesday, February 12th, 1969.

The Senate Committee on Banking, Trade and Commerce to which was referred the Bill S-26, intituled: "An Act to prohibit the advertising, sale and importation of hazardous products", has in obedience to the order of reference of February 4th, 1969, examined the said Bill and now reports the same with the following amendments:

1. *Page 1, lines 12, 13 and 14:* Delete subclause (b) of clause 2 and substitute therefor the following:

"(b) 'analyst' means a person designated as an analyst under the *Food and Drugs Act* or by the Minister pursuant to section 4;"

2. *Page 2, next following line 20:* Strike out the work "Inspectors" immediately preceding clause 4 and substitute therefor the words "Inspectors and Analysts".
3. *Page 2, next following line 30:* Add the following subclause to clause 4:

"(3) The Minister may designate as an analyst for the purposes of this Act any person employed in the public service of Canada who, in his opinion, is qualified to be so designated."

4. *Page 7, next following line 5:* Add the following subclause to clause 8:

"(3) Any order made under subsection (1) or (2) adding to Part I or Part II of the Schedule any product or substance not contained in either Part on the coming into force of this Act, unless within a period of two years from the day on which such order was made this Act has been amended by Parliament so as to incorporate the provisions of such order therein, shall, on the expiration of such period, be deemed to have been repealed and shall cease to have any force or effect; and the power of the Governor in Council to make an order similar in substance to any order so repealed shall also terminate on the expiration of such period."

5. *Page 7, lines 6 to 31 inclusive:* Delete subclauses (1), (2) and (3) of clause 9 and substitute therefor the following:

"(1) Where a product or substance is added to Part I or Part II of the Schedule by order of the Governor in Council, any manufacturer or distributor

of that product or substance or any person having that product or substance in his possession for sale may, within sixty days from the date of the making of the order, request the Minister that the order be referred to a Hazardous Products Board of Review.

(2) Upon receipt of a request described in subsection (1), the Minister shall establish a Hazardous Products Board of Review (hereinafter referred to as the "Board"), consisting of not more than three persons and shall refer the order in respect of which the request was made to the Board.

(3) The Board shall inquire into the nature and characteristics of any product or substance to which an order referred to it under subsection (2) applies and shall give the person making the request and any other person affected by the order a reasonable opportunity of appearing before the Board, presenting evidence and making representations to it."

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

THE SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

EVIDENCE

Ottawa, Wednesday, February 12, 1969.

The Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-26, to prohibit the advertising, sale and importation of hazardous products, met this day at 9.30 a. m. to give further consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have several items before us this morning and the first is to resume consideration of Bill S-26. As you will recall, last day we had a considerable amount of discussion on this bill. The two items that took most of the time in discussion were clauses 8 and 9 of the bill. Clause 8 gave authority to the Governor in Council by order to add to the prohibited list in Part I of the schedule and also to add to Part II which is a list of hazardous substances which can only be dealt with by and under regulation, and also gave him the power to delete from that list any items.

Then clause 9 was the clause which has to do with a Hazardous Products Board of Review. There was considerable discussion because the language was "may"—in other words there was a discretion somewhere as to whether when a manufacturer, for instance, of a product which was declared to be hazardous wanted to raise the issue, it appeared in clause 9 as presently drawn that there was a discretion as to whether he could get that Board of Review, and there was also a discretion given to the minister afterwards, even if the Board of Review found in favour of the particular manufacturer, as to whether that decision would be accepted.

Now we stood further consideration of the bill so that the minister might consider these points which were raised and now we are back here this morning.

I think our main attention should be directed to these two clauses, but that does not prevent any senator from raising any other clauses of the bill for discussion.

Mr. Minister, do you want to start off in relation to clauses 8 and 9 of the bill?

Senator Connolly (Ottawa West): Excuse me, Mr. Chairman, before we start do we need another motion to print?

The Chairman: No, the previous one just carries through.

Hon. S. Ronald Basford, Minister of Consumer and Corporate Affairs: Mr. Chairman and honourable senators, when I left the committee last week I said I would consult with the law officers of the Crown and with my officials, which I have done, and I would like to speak briefly to clause 9 which deals with the Board of Review of hazardous products. Several senators raised questions concerning this, and I have asked the sponsor of the bill, Senator Carter, to make some amendments at the appropriate time, or rather to propose some amendments to clause 9 which I might just outline to the committee.

Subclause (1) would be changed only to the extent that the 30 days in there would become 60 days. The purpose of that is that under the Regulations Act, regulations are published in the *Canada Gazette* and placed before Parliament within 60 days, and so we thought we should put 60 days in there.

Subclause (2) would read "Upon receipt of a request described in subsection (1)"—that is a request from a manufacturer or distributor. . . . "—the minister shall establish a hazardous Products Board of Review hereinafter referred to as the "Board" consisting of not more than three persons and shall refer the order in respect of which the request was made to the Board". That is to say if someone feels he is adversely affected by the order that the Governor in Council makes, he would file with me a request for a board and I would have to set a board up and the complaining party would have an automatic right to a Board of Review.

Subclause (3) would read "The Board shall inquire into the nature and characteristics of any product or substance to which the order referred to it under subsection (2) applies, and shall give the person making the request and any other person affected by the order a reasonable opportunity of appearing

before the board, presenting evidence and making representations to it." The balance of the clause would remain the same.

As I have made clear, the purpose of the amendments is to provide to any person feeling aggrieved by any order, an automatic right to a review of that order by that Board of Review. I, myself, raised the problem of duplication—that we could have ten or 20 or 50 requests. What I refer to the board is the order that I make, or the Governor in Council makes, so that if there were a number of distributors who felt affected, the order affecting them would be the same order and that order would go to the Board, and all 50 distributors would have a right to appear and make representation to the Board.

The Chairman: Mr. Minister, I am a little concerned here with clause 9. What happens, and where is there provision as to what happens, when the board has made its decision and reported back to you?

Hon. Mr. Basford: I think subclause (5) of clause 9 takes care of that:

(5) The Board, as soon as possible after the conclusion of its inquiry, shall submit a report with its recommendations to the Minister, together with all evidence and other material that was before the Board.

Subclause (6) reads as follows:

(6) Any report of the Board shall, within thirty days after its receipt by the Minister, be made public by him, unless the Board states in writing to the Minister that it believes the public interest would be better served by withholding publication, in which case the Minister may decide whether the report, either in whole or in part, shall be made public.

Subclause (6) is really drawn from a technique used under the Combines Investigation Act relative to the Restrictive Trade Practices Commission which may make the same kind of recommendation to the Minister, namely, that the report be not made public. It is in here at the request of the Department of Health and Welfare, who have functions and responsibilities under this act and who feel that in certain matters of health products it may well be advisable that the report of the Board and the evidence be not made public. But that would be a decision for the Board. It is not the Minister's decision; the Board has to make the recommendation.

The Chairman: I was thinking of the angle that the Board makes recommendations which in effect recommend supporting the position of the producer or manufacturer who has appeared and appealed to the Board. Then the Board's decision is communicated to

you by way of the report with those recommendations. Now, where in the act does it say what happens to the report and the recommendations?

Hon. Mr. Basford: Well, the report is made public.

The Chairman: I mean as to recognition of the report, if it is favourable to the manufacturer.

Hon. Mr. Basford: I explained last week, Senator, I think, particularly in reference to the responsibilities of the Department of Health and Welfare, that the final authority had to rest with the Minister of Health and Welfare who is responsible for the safety and health of the public, and that his responsibility could not be overridden by the Board of Review. But I suggest that the purpose of the protection here is that, if the Minister has acted arbitrarily or unwisely or has been advised unwisely, then the Board would point that out to him. I think the Minister, at his peril, would not review the report of the Board and change the orders.

The Chairman: I see that "Minister" in clause 9 is the Minister of National Health and Welfare.

Hon. Mr. Basford: It is either Minister.

The Chairman: I was looking at the definition, and I see that you are correct. Either one has jurisdiction over clause 9. This Board is to be an internal board appointed from within the department?

Hon. Mr. Basford: No. I explained last week that, certainly, our present intention was to use the Restrictive Trade Practices Commission as a Board of Review. However, the subject was raised by some of the senators that, if, for example, you got into certain medical products of some sort, you would want a different kind of Board with different expertise on the part of the Board members. You would want some doctors or chemists or people of that sort. It is not the intention or purpose of the Board to be independent, which the Restrictive Trade Practices Commission is under the act. The Board is appointed pursuant to and has all the powers under the Inquiries Act and would act as such.

Senator Connolly (Ottawa West): The Minister has very far-ranging discretion. He may appoint experts as he sees fit. There is no question about that.

The Chairman: That is right. Are there any questions or is there any amendment being proposed to clause 9?

Senator Molson: Mr. Chairman, I am not clear why the Minister says the Restrictive Trade Practices Board would be the one used for this purpose. I do not see any connection between the two. In fact, I am not sure that I do not see some dissimilarity.

Hon. Mr. Saford: Let me say that we did not see the need for setting up permanent machinery or establishing a permanent board to be called the "Hazardous Products Review Board". We do not expect that many applications under this review section. So we thought, as I described last week, that we would have an *ad hoc* approach to this. When someone requested a Board, we would establish a Board for him. Generally, my own thinking is that a suitable agency for this would be the Restrictive Trade Practices Commission on most consumer products that may be covered under this act. They are competent people. They know how to act as a commission in a quasi-judicial capacity. This has been their experience and their practice.

Of course, under this act they are entitled to call before them whatever expert witnesses they want or feel the need of under the Inquiries Act. I concede, however, as I say, with certain health and welfare matters, that the Restrictive Trade Practices Commission may not have the expertise on the commission that we think would be desirable or that the Minister of National Health and Welfare would think desirable, in which case we would appoint a Board with different personnel.

Senator Carter: Mr. Chairman, I would like to move that subclause (1) of clause 9 be deleted and the following be substituted therefor: "Where a product or a substance is added to Part I or Part II of the schedule by order of the Governor in Council, any manufacturer or distributor of that product or substance or any person having the product or substance in his possession for sale may, within 60 days of the date of the making of the order, request of the Minister that the order be referred to a Hazardous Products Board of Review".

The Chairman: Is this motion in relation to the new subsection (1) approved? Carried.

Senator Carter: I would move, seconded by Senator Croll, that subclause (2) of clause 9 be deleted and the following be substituted therefor: "Upon receipt of a request described in subclause (1), the Minister shall establish a Hazardous Products Board of Review, hereinafter referred to as the Board, consisting of not more than three persons, and shall refer to the Board the order in respect of which the request was made."

The Chairman: Does this amendment carry?

Some hon. Senators: Carried.

Senator Carter: I move, seconded by Senator Croll, Mr. Chairman, that subclause (3) of clause 9 be deleted and the following be substituted therefor: "The Board shall inquire into the nature and characteristics of any product or substance to which an order referred to it under subclause (2) applies, and shall

give the person making the request, and any other person affected by the order, a reasonable opportunity of appearing before the Board, presenting evidence and making recommendations to it".

The Chairman: Now, you have heard this proposed amendment. Is it carried?

Some hon. Senators: Carried.

Senator Flynn: Now, it all depends on whether you put the question on clause 9 as a whole.

The Chairman: Yes.

Senator Flynn: If there are no further amendments, what I would like to point out is that this problem of what the Minister may do with the report is tied to the other objection raised, especially by Senator Leonard, as to the ratification by Parliament of any addition to Part I or Part II, because my point is that if the Minister has full discretion he may disregard a report of the Board of Review and does not have to report to Parliament. Then I think this discretion is going too far. There is no redress. I do not find any redress before the court from a refusal of the Minister to yield to the recommendation made by the Board of Review. At least, if the order goes back to Parliament, if it has to be ratified by Parliament, we have that guarantee that someone will look into it. That is why I say this section as it stands, if there is no amendment later on, would not carry in the way that I think it should.

The Chairman: Well, Senator, the effect of clause 9, if it is accepted with these amendments, is that you get to the point that you have stated, where the Minister will have a report and recommendations from the Board. Now, it is his discretion whether he accepts that and acts on it. Let us assume that the report and recommendations are against the enforcement of such an order and he refuses to accept that. The effect of that is that the order remains under the authority of clause 8.

Senator Flynn: That is right.

The Chairman: And, therefore, if you think there is anything that should be done to correct that situation, then the place is in clause 8 and not in clause 9.

Senator Flynn: It may be that, if there is something done to clause 8, we do not have to do anything to clause 9. However, if nothing is done to clause 8, we might try to add something to clause 9. I do not want to close the debate on clause 9 before we deal with clause 8. That is the only point I make now.

The Chairman: Three amendments have been proposed and approved. What I propose to do now is

to stand clause 9 with these amendments until we deal with clause 8.

Senator Leonard: Mr. Chairman, I would like to follow Senator Flynn's remarks, and I have an amendment here to suggest.

The Chairman: To which clause?

Senator Leonard: To clause 8. I have supported the amendments which have been made to clause 9 because they are good and desirable and improve the clause. The minister has pointed out that they still leave the ultimate responsibility for what is, in effect, an amendment to the act in the hands of the minister, as he does not need to accept the decision of the Board of Review. The chances are that in most cases he probably would, but he still feels he should have that ultimate responsibility.

That brings us back, then, to the question of the responsibility of the minister and of the Cabinet to Parliament, and here we are into this whole realm of subordinate legislation which is the concern of all countries, including Canada, as to when legislation should be properly done by regulation because it is pertinent and necessary to carry out the legislation, and when it should be stopped from being, in point of fact, actual legislation.

I doubt whether, in my experience, I have ever seen anything quite so baldly put as section 8(2), reading:

An order amending Part I of the Schedule

— and that is part of the act, of the statute —

may be made by the Governor in Council on the recommendation of the Minister or the Minister of National Health and Welfare.

I think this kind of legislation should be subject to ultimate review by Parliament — that is the principle I think most people subscribe to — until we come down to some particular example where it may be that the proponents of this who feel the executive are the ones who should decide these things, leave legislation in this form.

Good and all as a Board of Review is, as part of this legislation, still they have not the ultimate power to make the decision pro or con the inclusion of a hazardous substance. This is a matter of real substance. After all, we have gone through all these years without any legislation saying what these hazardous substances are. They are matters of life and death; they are extremely important parts of our life today; and we do want to be sure that all the proper safeguards are placed that should be placed to ensure that the public interest is being well looked after.

In other legislation we have from time to time set time limits on the exercise of discretionary powers by

the Governor in Council and ministers, and it seems to me this is another of those cases where we might very properly, without in any way tying the hands of the minister or the cabinet, call for a review of the decision by Parliament.

So, the amendment I am about to suggest would be to the following effect, to add to section 8, which is the section, under both subsections 1 and 2, giving the power by Order in Council to amend the act — to add this subsection 3:

Clause 8 is amended by adding thereto subsection 3 as follows:

(a) Any order made under subsection (1) or (2), unless within a period of two years from the day on which such order was made this act has been amended by Parliament so as to incorporate the provisions of such order therein, shall, on the expiration of such period, be deemed to have been repealed and shall cease to have any force or effect; and the power of the Governor in Council to make an order similar in substance to any order so repealed shall also terminate on the expiration of such period.

Take, for example, any new hazardous substance the minister and his department, through the Governor in Council, think should be included under Part I or Part II. That can be done just as quickly as it could under the bill as it now stands. The only thing is that, even after hearing the Board of Review, the decision should be brought back to Parliament within two years for confirmation or otherwise.

If I have a seconder, I will move that motion.

Senator Connolly (Ottawa West): You do not need one.

The Chairman: You do not need a seconder.

Senator Connolly (Ottawa West): I rather hesitate to intervene in a situation where two such eminent counsel as the Leader of the Opposition and Senator Leonard have expressed themselves so forcefully.

The Chairman: Do not be bashful, senator!

Senator Connolly (Ottawa West): I will not be bashful, but they deserve a plug—not that they need it!

I think one of the things we should remind ourselves of is this, that under other legislation Orders in Council made like this do, first of all, come before Parliament and are required to come before Parliament. And if they do come before Parliament it is open to members of Parliament to question them, and it is open to them also either to ask for the Government to amend the act or to bring in a bill to

do that, which would be a private member's public bill, if you will, but it is still an avenue.

More important than that, I think we should remind ourselves particularly that what we are dealing with here are substances which are noxious or dangerous. I think we want to do all we can to make sure that these noxious or dangerous substances are kept out of commerce and are not available to the public. The departmental officers finding these things will make a recommendation, upon which the minister can act as he sees fit; but if these people persist in putting before the public things that are troublesome, then what we would complain about very strongly is that no action was taken. They are the offenders . . .

The Chairman: What do you mean by that, "that no action was taken"? Do you mean the Governor in Council did not add such an item to the list?—because he can do that at any instant.

Senator Connolly (Ottawa West): But I say that we would be pressing on the Government to be alert about, pressing upon both ministers to be alert about, is to watch for the introduction into the market of products of this character.

Now, if they are dangerous, if they are noxious, then the Order in Council puts them on the list and takes them off the market. If there is any question about it, the Board of Review makes a finding to the contrary. Surely, there is a pressure there upon the minister then to revoke the order, and it can be debated in Parliament because the order in council is laid before Parliament. What I am concerned about—and this struck me at the last meeting—is that if the getting of these substances off the market beyond the period of two years, as Senator Leonard's amendment suggests, requires a further act of Parliament, then I would point out that we all know what happens to some bills. In the Senate we have had experience of bills coming before us two and three times before they are finally passed, because of adjournments, elections, and all that sort of thing. It does seem that the amendment that has already been moved, plus this other provision which requires the order in council to be tabled—at which time it becomes parliamentary property—is the kind of protection that the public wants.

I think that by these amendments we will have given the people the protection they need in respect of noxious substances, which might possibly cause harm, coming on to the market. The mandatory requirement for a Board of Review would provide . . .

The Chairman: I think Senator Leonard's amendment was really directed to the protection of Parliament—Parliament's right to review legislation which it has passed and which is being amended by order in council.

Senator Croll: Surely, we are not protecting Parliament against itself. Parliament can look after itself.

The Chairman: I am using "Parliament" in the broad sense. I am sure you understand that. I am referring to Parliament representing the people. If Parliament enacts legislation, then that legislation should not be trifled with.

Senator Croll: It is not, usually.

The Chairman: I know it is not, usually.

Hon. Mr. Basford: When I left I said that I would consult with the Department of Justice. I have with me this morning Mr. Thorson, and I would think it would help if Mr. Thorson could comment on this question.

Mr. D. S. Thorson, Associate Deputy Minister of Justice: Mr. Chairman, as I understand Senator Leonard's proposal, it is in essence that there be a time limit on any order; that any order would lapse unless confirmed by Parliament within a period of two years. This technique of review is very similar, I think, to the technique that was employed in the Surcharge on Imports Order Act of 1963 which imposed, as I remember, a time limit of six months on any order made under section 4 of the Customs Tariff withdrawing the benefit of certain preferential rates of duty. It will be recalled by honourable senators that the use of this power in combination with the use of section 22 of the Financial Administration Act—that is, the remission power—had been criticized as effecting a fundamental alteration in the tax law without reference to Parliament.

I would have thought pretty clearly this is not the case here. Here the authority being sought by Bill S-26 is an authority which would be conferred by Parliament itself directly, and in express terms. I think it is fair to ask: Would it be appropriate to apply the same kind of technique under a regulatory act, such as Bill S-26? In my opinion, at any rate, there would be difficulties.

The most obvious comment that could be made about the proposal—and I think this was alluded to by Senator Connolly a minute ago, and this is a point that I think would occur to almost anyone—is that it would be difficult, awkward, and potentially time-consuming to have to bring forward one or even more bills before Parliament each year, or at the most each two years, in order to confirm the doing of what Parliament had already authorized to be done by executive action. It is reasonable to ask, I think, apart altogether from the element of obvious inconvenience: What is wrong with doing just that? I think there are a number of things that might be considered.

First of all, I would submit that there is a potential in the proposal for a built-in rigidity of an unfortunate

nature. For example, could the department deal with desirable changes from the prohibited class, which is the first part of this schedule, to the regulated class, which is the second part of the schedule? If this kind of change would require parliamentary approval then I would think it might very seriously impede the effective administration of the law.

The Chairman: Right on that point, Mr. Thorson, if it were something that was going to be deleted, and if an amending bill were not presented to Parliament, it would be deleted automatically within the two years.

Mr. Thorson: May I come to that, sir?

Senator Flynn: Are you suggesting the movement of a substance from Part I to Part II, or from Part II to Part I?

Mr. Thorson: From Part I to Part II.

Senator Flynn: This is an improvement in—

Senator Connolly (Ottawa West): . . . the status.

Senator Flynn: I do not think it is suggested that a deletion—

Mr. Thorson: May I deal with that point for a moment, because I think it is relevant.

Senator Flynn: I just want to understand where you are going.

Mr. Thorson: What if next year, or the year after—after Parliament had enacted this hazardous products act—Parliament were to amend the act in order to continue in effect the regulation of some particular product or substance, only to find that, say, six months later it was necessary either for Parliament or for the Governor in Council, depending upon how the confirmation rule were framed, to have to delete it from the Schedule? I do not think you would want to bar that possibility. I think that would be a rigidity that would have to be considered.

To return to your point, Senator Flynn, I take it that the power to remove items from the Schedule cannot really be made subject to parliamentary approval. If it were subject to parliamentary approval it seems to me that products that had been de-listed by executive action might then again appear back on the prohibited list or regulated list as a result of Parliament's failure to confirm the delisting order, or to do so in time. This, I submit, would result in a certain amount of chaos. I think there would be very great uncertainty if this were a possibility. I submit there is a potential for real hardship if that were to happen.

The Chairman: How could that happen, Mr. Thorson? The minister is not going to run out of the

ability to cause orders in council to be passed. Do you concede that as a possibility?

Mr. Thorson: No, sir, but if actions taken by way of deletion from the Schedule similarly required parliamentary approval in due course, then a de-listed—

The Chairman: But it would be effective right away.

Mr. Thorson: Yes, but if Parliament failed to confirm the de-listing, what would be the legal result? You might find the item appearing back on the list of prohibited or regulated items.

Senator Flynn: But if we were to ask for ratification only of orders adding to Part I or Part II, and not orders deleting articles or transferring them from Part I to Part II, would that meet your objection?

Mr. Thorson: I think so. I think there is a real problem in terms of parliamentary approval of actions by way of deletion from the Schedule, even if the law were so framed as to require direct deletion only by Parliament, I think. Again you might very well have injustices resulting from a delay in the taking of quite desirable action.

Senator Flynn: Well, I think it is quite a serious question.

Mr. Thorson: I agree, but I was merely commenting that the rule would not extend to deletions. Thirdly, the proposal as I understand it, and as it would apply to this particular bill, would not be very easy to write into the law and, once it is in the law, to police. Would Parliament, for example, have to protect against the possibility of an order lapsing only to be renewed by the further order the following day if it has lapsed?

The Chairman: The amendment proposed takes care of that in that it says the Governor in Council.

Mr. Thorson: Then there is a further point. Would we have for example again to protect or would we have to forbid transfers by executive action back and forth from the prohibited class to the regulated class and from the regulated class to the prohibited class for the mere purpose of ensuring that time would start running again? As I understand it the order would run for two years. Would the rule be aimed at administrative malfeasance or bad faith? These are problems that have to be taken into consideration. Again, and this is a different point, I think it would be fair to consider the implications of the proposal in terms of other acts where the same kind of power to add or subtract items from a schedule of the act is confirmed by Parliament. I have in mind in particular the Food and Drugs Act where there is very definitely a power to add by executive action to the schedule to the statute. In other words the statute can be amended by order of the Governor in Council directly. Really I

think the rationale that is advanced for the proposal would have equal application to a statute of this nature, but I would have thought that as a practical matter such a rule applied to a statute such as the Food and Drugs Act would be almost certainly unworkable having regard to the volume and frequency of the changes in the schedules to that act.

Now if the same principle were extended to a variety of other acts, I think you would get. . .

Senator Flynn: It is not a principle. You are suggesting that the legislation concerning food and drugs is concerned with a number of items. It is not a principle; it is a practical situation you are dealing with. But now you are referring to questions of principle.

Mr. Thorson: I am trying to say here that the adoption of a principle such as this—that the principle could be adopted because I think the rationale is the same in terms of an act such as the Food and Drugs Act where there is power to amend by executive action the terms of an act of Parliament.

Senator Flynn: The reasons would not be the same. The reasons for the Food and Drugs Act would not be the same as here. The number of items, I agree, but you don't have the same number of items under this legislation.

Mr. Thorson: I agree, but the principle would be the same and in terms of certain parts of the Food and Drugs Act the amendments are not frequent.

The Chairman: Do I understand the principle you are talking about? Is that the principle that legislation should not be amended by order in council but by Parliament?

Mr. Thorson: To the extent that the proposal is directed to providing a new mechanism and a law which provides for executive amendment of an act of Parliament, then my answer would be yes, sir.

The Chairman: The general principle, when you use that word to start off with, is that if Parliament enacts legislation, then Parliament is the body that should repeal or amend that legislation. That is the general principle. Then it gets down to a question of fact as to whether in the case of this particular bill, giving the executive power to amend is necessary in the circumstances and in the public interest.

Mr. Thorson: That is correct.

The Chairman: Then it becomes a question of fact.

Mr. Thorson: It is a value judgment that has to be made.

The only further point on this is the principle extended to other acts beyond the ones I have mentioned, and I think one could make a case for doing so in certain instances, then I submit the line between executive responsibility on the one hand and legislative responsibility on the other hand would be in danger of being blurred to the detriment of the discharge of both responsibilities.

Mr. Chairman, if I might become a little bit philosophical for the moment on the question of subordinate legislation, I am tempted to add a personal expression of view; under our system of government the legislature has every right to be vigilant about the terms on which it confers powers on the executive to make subordinate legislation. The legislature surely is entitled to define exactly what kind of power is to be granted and the circumstances that must exist as a condition of its exercise. Similarly if a power that has been granted by the legislature is being found to be abused, then the legislature has a clear right, and I would submit even a duty, to revoke the power, but I personally do not think the answer is to so hedge the use of the continuing validity of the power so as to risk making it inadequate for the task that Parliament has instructed the executive to deal with.

Senator Flynn: If I may interrupt here; you say the legislature has the power to revoke and intervene. But you know that in this case it would take a private bill and the initiative of a member of Parliament. You suggest it should come from Parliament and not from the Government. Do you think it is feasible under the rules now prevailing in the other place that this should happen?

Senator Connolly (Ottawa West): There is nothing to prevent it.

Senator Flynn: There is nothing to prevent the introduction of a bill, but passage of a private bill is another matter and is absolutely impossible if the Government decides it shall not pass because no time will be allocated. Nobody can succeed in having a private bill passed unless the Government agrees that it shall pass. So private legislation is not the remedy in the present case.

Mr. Thorson: I agree about the difficulties as a practical matter. But I think it is nonetheless true that virtually in every session bills are brought forward by the Government itself modifying the powers that have been delegated to the executive branch.

Senator Flynn: It is suggested that even if the Government knew that the legislature could or would, nevertheless I say in practice this is not true.

Mr. Thorson: If I conveyed that impression, may I correct it? If the power is abused there is a clear duty to come forward and modify that power.

Senator Flynn: But it is an impossibility to do it.

Mr. Thorson: Just to finish off the point I was developing, we do not feel the answer is to hedge the power in the manner suggested, and it seems to me that hedging the power in this fashion would result in finding that you have merely succeeded in transferring to the legislature the burden of exercising the power conferred on the executive. Applied to Bill S-26 itself, for example, the legislature might be in the position of having to function as a hazardous products board of review itself to decide between the conflicting claims and evidence of expert chemists or physicists or what have you.

Where the issue is the health or safety of the public as in this bill, this might be a very difficult function for Parliament to discharge.

The Chairman: Does that not happen all the time in connection with various types of legislation like taxation and other bills?

Mr. Thorson: Sir, I think that Parliament is singularly, in fact, obviously, the most appropriate forum in the country to deal with issues such as taxation. The question is, is Parliament the appropriate forum, and indeed, would Parliament judge itself to be a competent forum for the discharge of this kind of function which might very well involve having to assess conflicting technical evidence and to make adjudication between conflicting technical evidence for the purpose of arriving at some sort of decision as to whether to continue or discontinue to enforce the action taken by the executive.

Senator Macnaughton: I do not see any difficulty at all. What is wrong with Parliament setting up a sub-committee and calling experts, as we do in our science policy? To say that Parliament has not the mental capacity to decide these matters of scientific data is absurd.

Mr. Thorson: I am not suggesting, sir, that it cannot be done. I am suggesting that Parliament, in order to function, would have to rely on the very kind of expertise that the Government itself has to rely on.

Senator Macnaughton: What is wrong with having parliamentarians judge that? If the Minister can judge it, parliamentarians can.

Senator Connolly (Ottawa West): The answer to Senator Macnaughton's question, which is a valid question, is that the time factor creates the problem. The time factor for getting the bill through Parliament, that is.

The Chairman: Having two years to do it?

Senator Connolly (Ottawa West): Even having two years to do it, yes.

Senator Croll: Mr. Thorson, if at the end of the two-year period, or say the day after the two-year period has expired, the Minister issues a similar order to that which would have lapsed or died, the effect would be that that is an order that is in effect?

The Chairman: No. Under the amendment, he has not got that power.

Mr. Thorson: As I understood Senator Leonard's proposal, that would be barred.

Senator Leonard: That is right.

Mr. Thorson: If an order did lapse, the Governor in Council could never thereafter take action.

Senator Leonard: That is right.

Senator Flynn: He could take action by introducing a bill in Parliament.

Mr. Thorson: That is right. It would take parliamentary action to reinstate the order.

Senator Croll: He would be going much too far if he then put it back into Parliament.

Hon. Mr. Basford: I think there is some confusion possibly as to the kind of orders that will be passed under the sections, and I would like, with your permission, Mr. Chairman, to have a member of my staff distribute to senators copies of the regulations that have been passed under the counterpart legislation in the United States. I would like the senators to see the regulations under the Federal Hazardous Substances Labelling Act of the United States simply that they might see the extreme technicality of those regulations. I would like to just refer to part of those regulations. It is part of the regulation that states that products containing 5 per cent or more of petroleum distillates shall bear special labels with the word "danger" on them.

The Chairman: Is this subject generically on the prohibited list? Is this an amplification of what is to be included in that list? Our bill only deals with the additions of new substances.

Hon. Mr. Basford: The point I want to make is that any amendment of the regulations is going to add some product to the list.

The Chairman: No.

Hon. Mr. Basford: Yes, it is.

The Chairman: It may enlarge the scope.

Hon. Mr. Basford: That is right. It is going to cover new products that were not considered hazardous before.

With regard to these products containing petroleum distillates, there are a number of exemptions. For example, the following exemption is provided for:

Section (32) Hollow plastic toys containing mineral oil are exempt from the labeling specified in subsection 191.7(b) (3)(ii), under the following conditions:

(i) The article contains no other ingredient that would cause it to possess the aspiration hazard specified in subsection 191.7(b) (3)(ii).

(ii) The article contains not more than 6 fluid ounces of mineral oil.

(iii) The mineral oil has a viscosity of at least 70 S.U.S. at 100°F.

(iv) The mineral oil meets the specifications in the N.F. for light liquid petrolatum.

Here is another example:

(8) Containers of paste shoe waxes, paste auto waxes, and paste furniture and floor waxes containing toluene (also known as toluol), xylene (also known as xylol), petroleum distillates and/or turpentine in the concentrations described in subsection 191.7(a)(4) and (6) are exempt from the labeling requirements of subsection 191.7(b)(3)(ii) and (5) if the viscosity of such products is sufficiently high that they will not flow from their opened containers when inverted for 5 minutes at a temperature of 80°F., and are exempt from bearing a flammability warning statement if the flammability of such waxes is due solely to the presence of solvents which have flashpoints above 80°F. when tested by the method described in subsection 191.13.

Those are the kinds of regulations that will be passed under this act, and any amendment of those regulations is going to bring in some new products. I think that was the point Mr. Thorson made, that Parliament really is not designed to discuss whether the temperature affecting the viscosity of inverted containers should be 80 degrees Fahrenheit or 90 degrees Fahrenheit. Surely this is a subject of tremendous technicality. If anyone feels prejudiced by having the regulation changed so that it goes from 80 degrees Fahrenheit to 90 degrees Fahrenheit, that person has a right to have a Board of Review look at that question—a Board of Review of experts capable of calling upon experts. That is where that sort of issue should be debated. To say that it should be debated in the Board of Review is surely no discredit to Parliament. Parliament is dealing with the setting up machinery to deal with such problems. The principle is to deal with hazardous, poisonous, toxic products on the market. That is what Parliament is being asked to do. I do not think Parliament should be asked, with all due respect, to decide whether it should be 70 degrees Fahrenheit or 80 degrees Fahrenheit.

Senator Flynn: You are asking us to do it now.

Hon. Mr. Basford: This is the kind of regulation that will be passed. Any amendment of it will, under this amendment that Senator Leonard has proposed, have to come to Parliament. And this has, I suggest, another reaction or another effect. We will be passing regulations, senator, or proposing to pass regulations and, as I have made clear, we will consult with industry on these regulations. So we have a certain regulation in the books, and a certain part of industry feels that it is adversely affected by that regulation. Representatives come to me and say that that is a silly regulation and need not be so stringent. They may say, "These are the products you are concerned with. You should amend the regulation to exclude certain other products and just leave in these products that you are concerned with."

I do not want to say to them, or be forced into saying to them, that I accept their argument and that it is a good argument, but that I do not have enough time or that Parliament is too busy to amend the act. I am sure, sir, that you have made the observation that people in industry constantly get this reaction from Government. They go to Government to make representations and the minister says, "Well, I think you have a good point, but we have no time to amend the act. We have no time in Parliament to deal with your point. It is a good point, but I am sorry, we have to leave the law until it is revised."

I get representations every day in my office to amend the Copyright Act, or the Bankruptcy Act, or the Patent Act, or the Combines Act. But we are not doing it because we are waiting for a review. I do not want to say to industry, "I just do not want to go back to Parliament with an act to accept this regulation to exclude or add some of your products." With the greatest respect—and I appreciate your concern—this is what you are asking to be done in this act with your amendment.

Senator Croll: Mr. Chairman, I recall very vividly having before us some members who came here, a couple of Deputies who came with bills, and the question I asked was, "It is so obvious you should have done something about this some years ago. Why did you not?" And the poor frustrated civil servant not only shrugged his shoulders but said, "I have been trying to get this before my minister and Parliament for two or three years in order to get it done, and I had to come here to do it, but it should have been done before." That is exactly the point the minister is making, and when my friend Senator Macnaughton speaks about Parliament breaking itself up into sub-committees for the purpose of doing this and that, obviously he has been away from the House of Commons too long to realize that they are very busy over there, particularly in the committee stages. Even with their utmost efforts it is hard, if not impossible, for

them to continually get quorums and do the work available to them. The result is this will not be done and the purpose of the act will be frustrated for some time.

We are now starting out on something new, something we have not done before, something that is long overdue. Surely, we can leave the matter to the minister until such time as we see some abuses occurring, and then, at that time, he will hear about it and we will know about it, and the thing can be corrected. But now we have a Review Board that will sit, and I think of the Restrictive Trade Practices Act where from time to time Parliament is presented with an act. I have often looked at them, and then the next think I have heard is that Parliament, the minister, has decided not to take action on the recommendation, or to take action on it, which is the normal practice, and I have never heard too many complaints about that sort of matter, despite the fact that in some instances we might not agree. I think the department should be given an opportunity to test this, to see what it is doing. It is groping, it is attempting to reach out for something that is not only desirable. Mr. Chairman, time and again I have picked up the morning paper and read about a house burning down, seven children dying, the father or mother getting away, or the whole family being killed; about some hazardous substance being left in the house which caught fire, and away it went. The substance was being sold legitimately. As a matter of fact there was a hazardous substance the other day—

Senator Flynn: This is not relevant at all.

Senator Croll: It is the purpose of the act.

Senator Flynn: It is the purpose of the act, but not of the amendment.

Senator Croll: The amendment, to some extent, will handicap the minister, which is not what I think we ought to do at this particular time.

The Chairman: There will still be fires and people burned to death.

Senator Croll: Of course there will be, but at least we can do something to prevent it.

Senator Flynn: That is what we are doing.

Senator Croll: We are not doing it if we tie the minister up to the point where he has to go to Parliament to declare that this or that is a hazardous substance.

The Chairman: If he has two years within which to go to Parliament, that is not giving him enough time?

Senator Croll: Not at all.

Senator Flynn: It is only a matter of time.

Senator Croll: It is not a matter of time. At this time the minister is entitled to have a go at it in order to prove whether he can handle the situation or not. I feel confident that he can, but we are entering into a new field, and we ought to offer him a certain amount of discretion.

Senator Macnaughton: My learned friend's remarks are very seductive, but I was not referring to the minister at all, but to the statement made by our legal counsel. Learned as he is, it is possible to disagree with his interpretation, and I do, when he says that Parliament has not the ultimate capacity, if the minister has the ultimate capacity. Is there not someone left in the House of Commons and Senate who might have a similar quality of brain power to reach a similar decision?

The Chairman: That must be recognized, because we are asked to pass the bill in the first place.

Senator Flynn: Otherwise we should not pass the schedule, because there is a reference there as complicated as that just mentioned. I take it, if the minister is correct, that we should not pass on the schedule because we do not understand a word that is in there.

Hon. Mr. Basford: Senator, I hope you are being facetious.

Senator Flynn: To some extent I am.

Hon. Mr. Basford: I would like to make the point clear that the schedule, and Parts I and II, and the items described there are really there as examples, to illustrate the kind of products that will be dealt with under this act. They were included for the information of Parliament, to show that under this act we are concerned with household bleaches, cleansers and sanitizers, and we are concerned with household cleansers containing sodium hydroxide, potassium hydroxide, sodium bisulfate, hydrochloric acid or phosphoric acid. We are concerned with household polishes and glues, and so on. However, we are going to have to pass, under that schedule, regulations far more precise than those items that are enumerated. For example,—and I am now giving an off-the-cuff view here—I think there is no danger to a cleanser that contains one-one-hundredth per cent of hydrochloric acid, and our regulations will have to include those that have 5 per cent, or 10 per cent, or 15 per cent.

Senator Flynn: You are not dealing with the regulations that the Governor in Council is empowered to make under section 7. We are dealing only with section 8.

The Chairman: That is right.

Senator Flynn: There is a difference there. We do not want to intervene in the making of regulations indicated under section 7. We are dealing only with section 8, where you could add to the list something new; that is all. As far as the other regulations are concerned, we understand that they have to be made by the Governor in Council, and they do not need to be ratified by Parliament because they are administrative, in essence.

Hon. Mr. Basford: With all due respect, I do not entirely go along with you, senator, because as we develop more refinement in this case we are going to be adding and deleting.

Senator Flynn: Yes.

Hon. Mr. Basford: And I think the concern of the Senate is the addition of new products.

Senator Flynn: To Parts I and II.

Hon. Mr. Basford: Particular products being included within the ambit of the act.

Senator Flynn: Parts I and II.

Hon. Mr. Basford: The point I was making was that amendments to the regulations will be including more products, otherwise we would not be making the amendments. If those amendments have to come before Parliament, we will have built into this whole machinery an extremely undesirable inflexibility.

The Chairman: Mr. Minister, if I may say so, there is complete confusion between regulation and an order adding new products to the list. Take your own example, under Part II, item 2, cleansers. If the cleansers for household use contain certain materials that are mentioned here, no matter what the percentage may be, they are on a list of products that can be marketed et cetera only by regulation. If you say: "Well, it is true this cleanser contains two per cent", the answer will be: "That is right. That is the regulation." That is not creating a new product. A new product is something entirely different. We are becoming confused between this type of thing and a regulation adding a new product.

Senator Flynn: That is the only point we are trying to make. I suggest, Mr. Chairman, that the only argument against the principle of the amendment moved by Senator Leonard is that it is not possible for Parliament within two years to ratify the order in council or the amendment. I suggest that it is possible. We have seen some acts amended every year. It has always been possible to do it. When you have two years in which to do it then I do not see how you would not succeed in bringing such a matter before Parliament. There would be a technical problem for Parliament only in the case

of a conflict between a manufacturer and the minister; otherwise there would be no problem at all.

I submit that in practice there would be no problem at all. If there is a conflict between the minister or the Board of Review and the manufacturer it would then be time for Parliament to look into the matter and seek the advice of experts. I suggest that Parliament in those circumstances would be able to judge just as well as the Governor in Council or the minister, because they would be acting on the advice of experts, as they are doing every day when they pass regulations adding or subtracting from the list.

Therefore, I do not think a point has been really made against the amendment moved by Senator Leonard. It may be that it can be amended to cover the point of where we only add to Part I or to Part II. I would even accept the case of where a product or substance is transferred from Part I to Part II. I do not mind that because that would be a deletion from Part I and adding to the other class.

The Chairman: Are you suggesting an amendment?

Senator Flynn: I was trying to seek the consent or agreement of the minister to an amendment along the lines of the suggestion of Senator Leonard but modified in order to take out of it that which might be cumbersome, and one that will achieve all that we are trying to achieve in respect to protecting the right of an individual where there is a conflict between the minister or the Board of Review or other experts and the individual.

Senator Connolly (Ottawa West): Do you not accept the idea that in this case, when you are trying to protect the view of an individual who might very well be putting a substance on the market that is very dangerous for the public, he has a right of appeal?

Senator Flynn: No, no.

The Chairman: The order is the first event, senator. That takes it off the market, or makes it subject to regulation.

Senator Connolly (Ottawa West): Yes, and then he goes to the Board of Review, and is not satisfied.

The Chairman: The order is still in force, and for two years it is in force.

Senator Connolly (Ottawa West): All right, for two years it is in force, and then it goes out the window.

The Chairman: If Parliament does not deal with it.

Senator Connolly (Ottawa West): I do not see why you have to bring it back to Parliament.

Senator Leonard: It could be brought before Parliament in six months, if that is necessary.

Senator Connolly (Ottawa West): Perhaps we might ask the minister whether he expects very many products to be dealt with.

The Chairman: The minister answered that earlier by saying that in the first instance he was contemplating using the Restrictive Trade Practices Commission because he did not think there would be many occasions on which this procedure would be invoked.

Senator Connolly (Ottawa West): The appeal procedure?

The Chairman: Yes.

Senator Carter: I should like to get one of Senator Flynn's points clarified. I gather what he objects to is the minister having the power to amend the act for an indefinite period.

Senator Flynn: Yes.

Senator Carter: Your real objection is to his amending it?

Senator Flynn: I am objecting to the adding to the list, in Part I or Part II, indefinitely.

Senator Carter: But you have no objection to the minister's deleting from the list?

Senator Flynn: No, because there is a presumption that if the minister deletes from the list he has taken all necessary precautions, and there is no danger.

Senator Carter: But he is amending the act if he deletes just as much as he is if he adds. Is not that correct?

Senator Flynn: I do not mind sticking to the general principle embodied in the motion of Senator Leonard. I was yielding to the argument of Mr. Thorson which was to the effect that it would be cumbersome in that we would have to ask Parliament to ratify deletions, and if the department failed to obtain that ratification the product or substance would then be added back to Part I or Part II. That is the point that was made. All I was yielding to was the argument that that would be a cumbersome procedure.

Senator Carter: I cannot see any . . .

Senator Flynn: If you want me to be very rigid then I will follow you.

Senator Croll: If you are yielding to that argument then what stops you from yielding to the other argument?

Senator Flynn: Because it is not valid. I yield to an argument when it is valid, but I do not yield to an argument that is not valid.

The Chairman: Senator Croll is insisting at the moment that we be very logical.

Senator Flynn: Senator Carter insists on that.

Hon. Mr. Basford: Senator Flynn asked what products we think we would be dealing with. This is rather difficult to answer. We have in the Schedules items that are there purely as illustrations so that Parliament will be aware of the sort of things we are thinking about. I have said publicly, and I think I said in my opening statement, that one of the things we contemplate dealing with rather quickly is life preservers. They are not in the Schedule at the present time. They are presently covered by regulations of the Department of Transport, but those regulations provide only that there will be a certain number of life preservers in motor boats licensed by the Department of Transport. That was that department's sole authority, as I recall the matter, for those regulations. A person may still go into a department store, as my wife and I did last summer prior to going on a fishing trip, and be presented with six different kinds of life preservers, some of which meet the Department of Transport regulations, some of which meet the Workmen's Compensation regulations in the particular province, and some of which meet no regulations at all and which, in fact, serve no life saving purpose.

I think it will be easy, having regard to the fact that the Department of Transport has tested life preservers, and has a program applicable to their boats, to include within this act life preservers that do not measure up to those standards, so that unsuspecting people are not going into a department store and buying life preservers which are discovered to be, when a boat capsizes, not life preservers at all. That is one item that I think we can deal with fairly quickly.

Flammable children's clothing is another item that I have said publicly we can deal with as soon as we get some proper tests of flammability from the National Research Council. This, as I mentioned in my opening statement, is a very technical matter. There are some 28 different tests for flammability, but it is my hope that we can deal fairly soon with flammable children's clothing, because there have been a great many accidents resulting from it.

I mentioned in my opening statement that under the British Consumer Protection Act children's clothing is dealt with. To further my point I should like to mention those regulations.

Regulation 1 says, "A child's nightdress shall comply with the requirements specified in the Schedule to these Regulations."

A child's nightdress is defined as a nightdress which...

(a) Has a finished garment chest measurement not exceeding 38 inches;

(b) is of a length which, measured from the highest point of the shoulder to the bottom of the garment, does not exceed 46 inches;

(c) is not so made or designed as to be unsuitable to be worn by a person under the age of 13 years; and

(d) is not an infant's gown;

And I can go on, if honourable senators would like, as to what an old man's gown consists of and what an infant's gown consists of. Now, if I want to deal with children's clothing, which I think as soon as we have a test of flammability we will be doing, then I have to come to Parliament and put it in the schedule within two years. I suggest this is the point Mr. Thorson was trying to make, and that is not what Parliament is set up to deal with. Do we want to have a debate in Parliament as to whether a gown should be 13 inches long or 16 inches long? That is the kind of debate we would be getting into in Parliament.

The Chairman: Are you suggesting that there has not been that kind of debate in Parliament before?

Senator Croll: I regard myself as being a normal member of Parliament and able to hold my own there and here. I do not understand many of these items that are being included, and so I admit I must rely upon the department and upon the experts to tell me what is involved. I rely upon the fact that they have made extensive studies on these things. But if I find that there is something wrong, as I am bound to do in due course, then that is another matter. But in the initial stages I have to rely upon them because they are the experts, and other members of Parliament and members of the Senate are no more experts than I am on this. Consequently we have to leave it to the department.

The Chairman: Honourable senators, we have had a very general and detailed discussion and we have had the benefit of Mr. Thorson's view and the view of the minister. Do you think it is about time that we examined the amendment to determine whether it is in the form that is agreeable? Senator Leonard, are you yielding to Senator Flynn on the suggested restriction?

Senator Leonard: On the powers of deletion only.

The Chairman: Only the power of addition?

Senator Flynn: I was trying to meet the objection of Mr. Thorson. What I am asking for is protection for

the manufacturer. I am sure the public will be protected.

The Chairman: How do you suggest the amendment should read?

Senator Flynn: It would be exactly the wording suggested by Senator Leonard except that after the words "any order made under subsection (1) or (2)" we would add the words "adding to Part I or Part II of the Schedule, any product or substance not contained in either Part on the coming into force of this Act," and then go on with "unless within a period of two years from the day" et cetera.

Senator Croll: Since I am totally confused I will vote against it.

The Chairman: Are you ready for the question?

Senator Flynn: That is too easy an approach.

Senator Croll: It is not easy.

Senator Flynn: If I were to yield to the minister I would not vote on the bill.

Senator Leonard: I will accept that amendment if we start on the basis that there is now no legislation covering a great many products and we are taking effective action in bringing in certain products. We see those before us now. If we are satisfied that any of these could be put back in the open market, then we can vote for the change that is suggested by Senator Flynn, and I think that change would be all right.

The Chairman: You will move the amendment, Senator Flynn?

Senator Flynn: I would say the amendment should be moved by Senator Leonard.

The Chairman: Those in favour of the amendment please raise their hands.

Senator Kinley: What is the amendment?

Senator Flynn: To obtain ratification by Parliament within two years when they add to the list.

The Chairman: Will those in favour of the amendment raise their hands so that we can count?

Now will those against the amendment raise their hands?

The amendment carries.

Senator Carter: There are a couple of other amendments.

The Chairman: There was one question that I was wondering if the minister would clarify for us. I don't understand it, but that in itself is not too difficult to understand. Under subclause (2) of clause 8, I was wondering why it specified that an order amending Part I may be made by the Governor in Council on the recommendation of the minister or the Minister of National Health and Welfare. Is there some significance to be attached to that? This is dealing with hazardous products that are being prohibited from being imported or sold, and in those cases the Minister of National Health or yourself may make the recommendation. Do I take it that in all other cases in the list in Part II you as the Minister of Consumer and Corporate Affairs make the recommendation?

Hon. Mr. Basford: Yes. We got back to Bill S-22 which was put forward by the Department of Health and Welfare. Part of the products here fall within the ambit of the Department of National Health and Welfare and the purpose is to show that they have immediate access to the act and to the schedule.

The Chairman: Senator Carter, you said there were some further amendments.

Senator Carter: Referring to subclause (2) of clause 4, the first amendment has to do with the definition of "analyst" to be found in clause 2, paragraph (b). I move that paragraph (b) of clause 2 defining "analyst" be deleted and the following substituted therefor: "Analyst" means a person designated as an analyst under the Food and Drugs Act or by the minister pursuant to section 4."

The Chairman: The only addition is "or by the minister pursuant to section 4". This is to provide for greater flexibility in dealing with this question? Is the amendment accepted?

Hon. Senators: Agreed.

Senator Carter: The other amendment has to do with clause 4 and the first deals with the heading of this clause. The present heading is "Inspectors" and I move that the words "and Analysts" be added so that the heading will be "Inspectors and Analysts".

The Chairman: Shall the amendment carry?

Hon. Senators: Carried.

The Chairman: And your next amendment?

Senator Carter: The other is an amendment to clause 4 by adding a third subclause. I move that subclause (3) be added to clause (4) to amend clause 4 by adding thereto the following subclause (3) "The Minister may designate as an analyst for the purpose of this act any person employed in the public service of Canada who in his opinion is qualified to be so designated."

The Chairman: Mr. Minister, I think I asked you when I looked at this first whether this is broad enough for your purposes.

Hon. Mr. Basford: It is, and the purpose of the amendment was that any person who was an analyst in the public service could act as an analyst for the purpose of this legislation.

The Chairman: Shall the amendment carry?

Hon. Senators: Carried.

The Chairman: Do you wish to go through the bill section by section, or do you wish to pass the bill as amended?

Hon. Senators: Pass the bill.

The Chairman: Agreed?

Hon. Senators: Agreed.

Senator Connolly (Ottawa West): I just want to clarify something in my own mind by asking Mr. Thorson this question: The amendment which was carried requires additions to the schedules to be confirmed by Parliament within two years. There are other acts which provide that where changes are desired, upon the appropriate minister laying Orders in Council which bring the change before Parliament, if within a certain period of time, say, 60 days, a resolution is passed requesting legislation, then in that case the normal processes of Parliament are invoked and a bill is introduced and debated. Would that have been an appropriate way to proceed in a bill of this kind? I realize the question is purely theoretical.

The Chairman: We have got beyond that stage.

Senator Connolly (Ottawa West): I know we have, but we do not have Mr. Thorson here very often and, having had the experience of having him advise the legislative committee of the cabinet when I was chairman, I think it is a useful kind of question to have him answer.

Mr. Thorson: As I understand your question, Senator Connolly, what you are proposing is really the negative of the proposal that was advanced this morning, namely, that an order would go before Parliament and then would be subject to being upset on the carriage of the motion of either house or both houses.

Senator Connolly (Ottawa West): Yes.

Mr. Thorson: In other words, it would take an affirmative act of either house or both houses to upset the validity of what had been done.

Senator Connolly (Ottawa West): I would say to bring on legislation to correct, if you will. I do not care, really, what the language is.

Mr. Thorson: I assume, though, that the essence of the proposal is that the order continues in force but subject to a mechanism to enable a review on the carriage of the motion by either house upsetting the order.

Senator Connolly (Ottawa West): That is right.

Mr. Thorson: This is rather similar to what we, for example, had in the Maritime Transportation Unions Trustees Act several years ago. I believe it was 1965.

Senator Connolly (Ottawa West): It seems to me that there was something like that in the redistribution.

Mr. Thorson: The essence of that proposal was that the order continues valid subject to being upset. The question is, what are the parliamentary mechanisms that are effective to effect such an upset? If, for example, again by extending the argument, what would be the situation if you have a block of orders, motions coming from here and there, to the effect that the order be unrevoked?

Senator Connolly (Ottawa West): That is right.

Mr. Thorson: How does this work into the programming of house time, Senate house time and so on?

Senator Connolly (Ottawa West): I would assume that in a case like this it would be no more difficult than is required under the present amendment. It might be less difficult, because in this case everyone has to get parliamentary sanction within two years, and under the procedure that I am discussing only the ones that are objectionable would have to get parliamentary consideration.

Mr. Thorson: I appreciate the significance of that.

Senator Flynn: How would you proceed with your objection?

Senator Connolly (Ottawa West): There is no problem. We have a couple of precedents.

Senator Flynn: Not in practice in Parliament. I think you have it on the statutes.

Mr. Thorson: There are examples in the statute books. The Electoral Boundaries Readjustment Act is one that involves an upset mechanism of a similar nature. The real problem here is the effectiveness of the mechanism as a parliamentary review procedure.

The Chairman: Gentlemen, we have disposed of the bill. How long are we going to talk about it.

Senator Carter: With respect to clause 4, I would just like to ask a question of the Minister or one of his officials. Is it assumed that an analyst designated under clause 3 will be certificated, or are you going to make provision for such certification as you have done for inspectors in clause 2? It says here that he is qualified. You interpret that as being certificated?

Hon. Mr. Basford: Yes.

Senator Carter: There is no need to provide for certification as you have done for inspectors, then?

Hon. Mr. Basford: No.

Senator Carter: There is no need to add inspector or analyst.

Hon. Mr. Basford: No.

The Chairman: All right. Thank you, Mr. Minister.

Senator MacNaughton: Have we passed the bill?

The Chairman: Yes. I asked if the bill as amended passed, and the committee agreed. I did not recognize the individual voices, but there were no negatives.

Hon. Mr. Basford: It is passed.

The Chairman: Yes.

The Committee then proceeded to the next order of business.



First Session—Twenty-eighth Parliament

1968-69

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 20

WEDNESDAY, FEBRUARY 12th, 1969

Complete Proceedings on Bill S-28,

intituled:

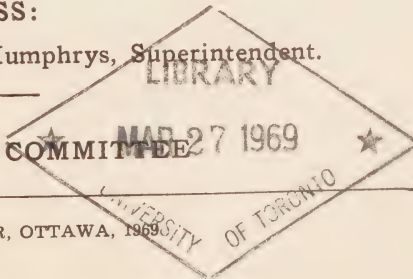
"An Act to amend the Co-operative Credit Associations Act".

WITNESS:

Department of Insurance: R. Humphrys, Superintendent.

REPORT OF THE COMMITTEE

THE QUEEN'S PRINTER, OTTAWA, 1969



THE SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Lang
Aseltine	Desruisseaux	Leonard
Beaubien (<i>Bedford</i>)	Gelinas	Macnaughton
Benidickson	Giguère	Molson
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Inman	Welch
Connolly (<i>Ottawa West</i>)	Isnor	White
Cook	Kinley	Willis—(30)

Ex officio members: Flynn and Martin

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, February 6th, 1969:

“Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Sparrow, seconded by the Honourable Senator Everett, for the second reading of the Bill S-28, intituled: “An Act to amend the Co-operative Credit Associations Act”.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Sparrow moved, seconded by the Honourable Senator Everett, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative.”

Robert Fortier,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

Wednesday, February 12th, 1969.
(21)

At 11.05 a.m. the Senate Committee on Banking, Trade and Commerce proceeded to the consideration of Bill S-28, "An Act to amend the Co-operative Credit Associations Act".

Present: The Honourable Senators Hayden (*Chairman*), Beaubien, Benidickson, Blois, Carter, Connolly (*Ottawa West*), Croll, Desruisseaux, Flynn, Hollett, Inman, Kinley, Leonard, Macnaughton, Martin, Molson and Willis. (17)

In attendance: E. Russel Hopkins, Law Clerk and Parliamentary Counsel.

Upon motion, it was *Resolved* to print 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill S-28.

The following witness was heard:

Department of Insurance:

R. Humphrys, Superintendent.

Upon motion, it was *Resolved* to report the said Bill without amendment.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

Wednesday, February 12th, 1969.

The Senate Committee on Banking, Trade and Commerce to which was referred the Bill S-28, intituled: "An Act to amend the Co-operative Credit Associations Act", has in obedience to the order of reference of February 6th, 1969, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

Salter A. Hayden,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON BANKING, TRADE AND COMMERCE

EVIDENCE

Ottawa, Wednesday, February 12, 1969.

The Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-28, to amend the Co-operative Credit Associations Act, met this day at 11.05 a.m. to give consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, we are dealing with Bill S-28. May we have the usual motion to print?

Upon motion, it was *resolved* that a verbatim report be made of the proceedings on the said Bill and that 800 copies in English and 300 copies in French be printed.

The Chairman: Honourable senators, we have Mr. Humphrys here this morning in connection with Bill S-28, an act to amend the Co-operative Credit Associations Act. We had a good explanation of this bill in the Senate. Perhaps it would be in order to have a statement from Mr. Humphrys as to the purposes of the bill.

Mr. R. Humphrys, Superintendent of Insurance: Mr. Chairman, honourable senators, the purpose of this bill is to effect certain amendments in the Co-operative Credit Associations Act. These amendments have the effect of relaxing some of the restrictions in the act that are applicable to organizations subject to it and to grant some modest additional powers.

The Co-operative Credit Associations Act is intended to establish a system of supervision and inspection applicable to certain central credit societies. It applies to any credit society incorporated by Parliament and also to those provincial central credit societies that voluntarily make themselves subject to the act by becoming members of the federal society.

At the present time there is only one federally incorporated society and four provincial centrals that are members of it. Thus, the act applies only to these five organizations. The federal society is the Canadian Co-operative Credit Society. The provincial centrals that are members are the provincial centrals for the provinces of British Columbia, Saskatchewan, Manitoba and Ontario.

So far as a federally incorporated society is concerned, the act contains all the usual corporate clauses dealing with the internal government of the society, and it contains certain restrictions on investments and loans designed to achieve and maintain a strong and solvent position.

With respect to provincial societies that become subject to the act, they are then deemed to be federally incorporated and are endowed with certain corporate powers in the deposit-taking and lending fields. They are also subject to certain limitations on investments and loans.

The act was passed in 1953, principally at the request of the co-operative movement. They desired a national central society which would provide a vehicle for exchanging funds in the co-operative movement from one part of Canada to another, and also some doubt was being expressed concerning the constitutional validity of incorporation of some of the provincial centrals.

This act provided means whereby they could be endowed with federal status and granted corporate powers that some thought lay within the banking field. For some years the co-operative movement has been requesting some relaxation of the provisions of this act in order to enable them to continue sound development. It has been thought these changes can now be granted since the organizations concerned have grown in financial strength and in management skill over the 16 or so years since the act was in force.

I think, Mr. Chairman, that is all that would be useful by way of a general statement. I would suggest that perhaps the best course from here on is to look at the individual clauses, and I can explain the purpose as we come to them.

The Chairman: Are there any particular questions at this stage? The bill seems pretty straightforward, Mr. Humphrys, and you made some reservation of explanation of the purposes as and when we come to them. It may well be, in the circumstances of this bill, that we will not do a section by section study, so that my injunction to you would be: Speak now or forever hold your peace!

Mr. Humphrys: In that event, I will touch on two or three of the main points.

Senator Connolly (Ottawa West): The general effect seems to be that even though an act has been passed by Parliament incorporating all these associations, amendments to the charter may be sought by way of application for supplementary Letters Patent. In other words, you will not require these people to come back to Parliament to get their charter amended.

Mr. Humphrys: Yes.

The Chairman: That is a very commendable provision, I would say.

Senator Connolly (Ottawa West): Highly.

The Chairman: And not too soon.

Senator Connolly (Ottawa West): That is right.

Mr. Humphrys: I would like to touch perhaps on three points.

One rather special feature of this Act is when a provincial central—that is, an organization incorporated by a province—becomes subject to this act by becoming a member of the federal society, it is thereupon deemed to be federally incorporated and is granted certain powers. Legislation now provides that such a provincial central must come to Parliament and be declared eligible by Parliament. This proposes to leave it to the Governor in Council to declare eligibility.

The Chairman: On that point, the provincial central which may become a member of the federal and the declaration that it is to be deemed thereafter to be a federal company, I take it at the present moment that, as it exists, it is not a provincial company but a non-incorporated body, is that right?

Mr. Humphrys: I do not think this has been thoroughly resolved. I would think it is an incorporated body. There may be some doubt about certain of its powers, if they were judged to lie within the banking field.

What this act has done is to consider it to be a credit society incorporated by Parliament, and to endow it with certain powers; but we have been proceeding on the assumption that such an organization has a sort of dual personality: it has the powers granted to it pursuant to its provincial incorporation, in so far as they are within provincial jurisdiction; and it has also the powers granted to it under this act.

The Chairman: Right there, if you would stop for a moment, the thing that bothers me is, in effect, are we declaring that a provincially incorporated company, as and from a certain date, is to be deemed to be or regarded to be a federal company?

Mr. Humphrys: This is what we have done, senator, when the act was passed in 1953.

Senator Connolly (Ottawa West): But subject to the restrictions of the federal act?

Mr. Humphrys: Yes, it was considered to continue to have the powers granted to it pursuant to its provincial incorporation, except as those were specifically modified by this legislation.

The Chairman: You mean it has a dual personality?

Mr. Humphrys: Yes.

The Chairman: I can understand that, but the next stage, to say some of the powers it has heretofore had in its provincial charter are no longer powers which it may exercise, are you going that far?

Mr. Humphrys: Yes.

Senator Connolly (Ottawa West): Federally or just provincially?

Mr. Humphrys: We are restricting all of its powers—that is, where there is a restriction in this act which is interpreted to be a restriction of the powers of that organization.

Senator Connolly (Ottawa West): And the constitutional authority is the power to legislate in respect of banking?

Mr. Humphrys: That is the basis of it, senator, yes, and the restrictions that are imposed by this act on the provincial centrals deal only with the aspects of its investments and loans.

The Chairman: Is there a legal opinion that exists in support of the constitutionality of what is proposed in this bill?

Mr. Humphrys: The constitutional point was dealt with at the time the act was adopted in 1953. This bill does not propose any change in that basic structure, except it does have a clause that specifically states that these provincial centrals continue to have the powers granted to them pursuant to their provincial incorporation, except as specifically limited.

Senator Connolly (Ottawa West): Can they exercise them within the province in which they were incorporated?

Mr. Humphrys: Yes.

Senator Connolly (Ottawa West): All the powers which the province gave them, they can exercise within that province?

Mr. Humphrys: Yes, except as specifically restricted by this act.

Senator Connolly (Ottawa West): So, in fact, you cut them off?

Mr. Humphrys: Yes.

Senator Connolly (Ottawa West): Then these provincial organizations need not subject themselves to this act?

Mr. Humphrys: No.

Senator Connolly (Ottawa West): So it is purely voluntary on their part?

Mr. Humphrys: Yes.

Senator Connolly (Ottawa West): And if they do, they are limited in every aspect of their application by whatever the restrictive provisions are in this act?

Mr. Humphrys: Yes.

The Chairman: You mean it is a matter of agreement, the same as the form you might sign when you become a member of a club?

Mr. Humphrys: Yes, in a sense. There is no compulsion on provincial centrals to bring themselves under this act and, in fact, some of the provincial centrals have not done so.

The Chairman: All the statute says to a provincially incorporated company is, "If you have the idea you want to join this rather exclusive federal club, then you must agree not to exercise certain powers which you possess provincially"?

Mr. Humphrys: Yes. Also, on the other side, they are granted by Parliament the power to accept deposits and make loans.

Senator Connolly (Ottawa West): They do it with their eyes open. There is that about it.

The Chairman: Yes.

Senator Connolly (Ottawa West): Have we had any representations from the organizations, Mr. Chairman?

Mr. Humphrys: These provisions have been requested by the co-operative movement, and discussions have taken place over some time between the department and the organizations concerned.

Senator Desruisseaux: Mr. Humphrys, will this enable these clubs to deal more easily interprovincially?

Mr. Humphrys: It was the original intention to use the federally incorporated society as a vehicle through which the co-operative movement could exchange funds from one province to another. As a matter of fact, it has not worked well that way because the co-operative credit movement in each province has needed all of its funds within its own province and there has not been enough left over to move to the federal society and thus pass to another region. The society has put forward the view that the restrictions imposed on a federal society under this act are so tight as to hamper its development. Nevertheless, it was thought wise to proceed in that way in the early 1950s

because the organization was a new idea, and the provincial centrals at that time were not all that well established or strong. They have grown in strength since that time, and that justifies the relaxation of some of the restrictions.

I cannot say whether or not this will really result in any great development of the federal society. It might. On the other hand, it is quite possible that at some point the co-operative movement might think its best interests lie in seeking the incorporation of a bank to serve the movement.

Senator Connolly (Ottawa West): I suppose, apart from the extra powers that are given to these provincial bodies, even though they have to surrender certain powers given to them by the provincial authority...

The Chairman: I think the right language is that they would agree to forego the exercise of certain provincial powers.

Senator Connolly (Ottawa West): All right, but they have also the advantage, I suppose, of supervision. At least, so far as the public is concerned, they are known to be supervised by the federal authority, and therefore their status is raised in the eyes of the investing public which might be dealing with them.

Mr. Humphrys: These organizations have a quite limited contact with the investing public in general. They operate within the co-operative movement, and do not usually go outside the movement for funds, although they do to some extent.

Senator Connolly (Ottawa West): But, in any event, the fact that they are known to be subject to the federal act improves their status a good deal, does it not?

Mr. Humphrys: I believe so, senator, yes.

Senator Carter: Might I ask, Mr. Chairman, if these co-operatives or credit associations will become subject to the provisions of Bill S-17, the investment companies bill, when that becomes law?

Mr. Humphrys: I do not think it was so intended. I will turn to the other act. I think there is a specific exemption in it.

The Chairman: If so, the next question is: Why?

Mr. Humphrys: No, there is a specific exemption. That bill exempts organizations subject to the Co-operative Credit Associations Act.

The Chairman: Then the question arises: Why that exemption?

Mr. Humphrys: Because they are supervised under this act.

Senator Carter: And this act gives the same protection to the public as Bill S-17 is supposed to give?

Mr. Humphrys: I would think more so, senator.

Senator Connolly (Ottawa West): Let us say it is better to have a special controlling act than a general controlling act.

The Chairman: Yes. Are there any other points in the bill that you wish to refer to, Mr. Humphrys?

Mr. Humphrys: There are two other points. One is that at present organizations are restricted in the volume of money they can accept by way of deposit, or by way of borrowed funds, to ten times their capital, surplus and reserves. This bill will raise that limit to twenty times, subject to approval by the minister on the recommendation of the Superintendent.

Senator Connolly (Ottawa West): What section is that?

Senator Desruisseaux: That would be section 47.

Mr. Humphrys: Yes. It is clause 8 on page 5 of the bill, which amends section 47 of the act.

Senator Connolly (Ottawa West): Yes.

The Chairman: It says it shall not exceed ten times the aggregate of its paid-up capital, the amount of its guarantee fund, and the amount of its surplus.

Mr. Humphrys: Yes, except as authorized by subsection (2). The new material is subsection (2) which is marked by a side line, and which provides that if the association adopts a by-law, approved as indicated there, it can go up to twenty times subject to approval by the minister.

The Chairman: With the approval of the minister on your recommendation?

Mr. Humphrys: Yes.

The Chairman: Are there any other points?

Senator Connolly (Ottawa West): Do you use the words "twenty times" in that subsection?

The Chairman: Yes, it is in subclause (b) on page 6.

Senator Connolly (Ottawa West): I see it now.

Mr. Humphrys: The other point concerns the question of the liquidity reserves. At present organizations subject to this act are required to keep at least 20 per cent of their deposits in the form of federal Government securities, provincial Government securities, municipal securities, school securities, or cash. The rules say that five per cent of the deposits must be in cash, and at least 15 per cent in securities of the type I have described or cash.

Senator Connolly (Ottawa West): What section is that?

Mr. Humphrys: That is clause 6 on page 3.

Senator Beaubien: Mr. Humphrys, does it stipulate the length of the maturity of the securities?

Mr. Humphrys: No. These organizations do not issue long-term obligations. They are mostly in the deposit business, so their liabilities are demand or short-term deposits.

Senator Desruisseaux: What about mortgages?

Mr. Humphrys: They are not in the mortgage business. So, this will lump together all their deposits and require them to keep a liquidity reserve of 20 per cent. That is the present rule. This change will do two things. It deletes municipal and school securities from those that are eligible as part of the liquidity reserve, and it permits a provincial central to count as part of this its reserve, deposits with the federal society. This is parallel to the situation that now exists so far as the local credit unions are concerned. They may count as part of their liquidity reserves deposits in the provincial central under the provincial law. Heretofore provincial centrals subject to this act have been required to keep their cash reserves either in cash on hand or deposits in a chartered bank. This will require them to keep at least five per cent of their deposits still in that form, but as respects the total of 15 per cent of the deposits constituting the balance of the liquidity reserve, they would be able to count deposits with the federal society as part of the liquidity reserve up to 5 per cent of the deposits. The reason for deletion of the municipal and school securities was that it was thought that while they are usually of good quality they are not usually of sufficient liquidity to rely on them as a source of ready cash to meet deposit withdrawals.

The Chairman: Any other sections?

Mr. Humphrys: The federal society may not now lend more than 10 per cent of its capital and deposits to any one member. Provincial societies are permitted to exceed that subject to approval by two-thirds of the directors and quarterly reporting to the superintendent and all members. This amendment will extend the same power to the federal society.

The Chairman: When they report that, have you a power of veto?

Mr. Humphrys: No.

Senator Connolly (Ottawa West): Well, then, what happens?

Mr. Humphrys: The point is that if they make a loan of more than 10 per cent of their capital and deposits to any one member, firstly it must be approved by two-thirds of the directors, secondly it must be for not more than one year, and thirdly it must be adequately

secured and they must send quarterly reports to all members setting forth these large loans. A copy of that comes to the superintendent.

Senator Connolly (Ottawa West): Who supervises as to the adequacy of the security?

Mr. Humphrys: Nobody has any specific authority on that. We would look at it and form an opinion as to whether in our view it was adequate or not. If there was a difference of view between ourselves and the society we would not have the power to rule alone. If we change the statement and rule the loan out on the grounds we thought it was not adequately secured the organization would have an appeal against our ruling. Generally the principle involved is to let the members know what is being done and to keep us informed and so provide an opportunity for rectifying a practice if it appears to be becoming dangerous.

The Chairman: You would have the power to determine whether the excess in this loan over what is provided in the statute puts the company in a position where there is peril or risk?

Mr. Humphrys: Yes, we have that over-riding power.

The Chairman: And you could exercise those over-riding powers. What would be the effect on the company in those circumstances? Would they have to stop doing business?

Mr. Humphrys: They would have to stop doing business.

This provision has been in the provincial act since it was passed in 1953 and it has been satisfactory. The proposal is now to extend it to the federal society.

The Chairman: Honourable senators, we could go through the bill clause by clause, but we had a good explanation in the Senate and Mr. Humphrys has hit all the high points in the bill. Are you prepared to authorize reporting of the bill without amendment?

Hon. Senators: Agreed.

Whereupon the committee proceeded to the next order of business.



First Session—Twenty-eighth Parliament
1968-69

THE SENATE OF CANADA
PROCEEDINGS
OF THE
SENATE COMMITTEE
ON
BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 21

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WEDNESDAY, FEBRUARY 26th, 1969

Fourth Proceedings on Bill S-17,

intituled:

"An Act respecting Investment Companies".

ORGANIZATIONS REPRESENTED:

Industrial Acceptance Corporation Limited; The Canadian Manufacturers' Association; The Association of Canadian Investment Companies; Canadian Pacific Investments Ltd. & Canadian Pacific Securities Ltd.; Massey-Ferguson Limited.

APPENDICES:

- "A"—Brief submitted by Industrial Acceptance Corporation Limited.
- "B"—Brief submitted by The Canadian Manufacturers' Association.
- "C"—Brief submitted by The Association of Canadian Investment Companies.
- "D"—Brief submitted by Massey-Ferguson Limited.
- "E"—Brief submitted by Canadian Chamber of Commerce.

THE SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Lang
Aseltine	Desruisseaux	Leonard
Beaubien	Gelinas	Macnaughton
Benidickson	Giguère	Molson
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Inman	Welch
Connolly (<i>Ottawa West</i>)	Isnor	White
Cook	Kinley	Willis—(30)

Ex officio members: Flynn and Martin

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, January 22nd, 1969:

“Pursuant to Order, the Senate resumed the debate on the motion of the Honourable Senator Desruisseaux, seconded by the Honourable Senator Sparrow, for second reading of the Bill S-17, intitulated: “An Act respecting Investment Companies”.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Desruisseaux moved, seconded by the Honourable Senator Sparrow, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.”

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

Wednesday, February 26th, 1969.
(22)

At 9.30 a.m. this day the Senate Committee on Banking, Trade and Commerce resumed consideration of Bill S-17, "An Act respecting Investment Companies."

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien, Benidickson, Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Gélinas, Giguère, Inman, Isnor, Kinley, Leonard, Thorvaldson, Walker and Willis.—(20)

Present but not of the Committee: The Honourable Senator Phillips (*Rigaud*).

In attendance:

E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The following witnesses were heard:

INDUSTRIAL ACCEPTANCE CORPORATION LIMITED:

L.E. Nichol, President;

J.S. Land, Executive Vice-President, Finance.

THE CANADIAN MANUFACTURERS' ASSOCIATION:

H.J. Hemens, Q.C., Chairman, Committee on Corporation Law (Secretary and General Counsel, Du Pont of Canada Limited).

THE ASSOCIATION OF CANADIAN INVESTMENT COMPANIES:

J.V. Emory, Vice-President (President, United Corporations Limited);

W.I.M. Turner, President, Power Corporation of Canada Limited;

R. de Wolfe MacKay, Legal Counsel (Counsel, Power Corporation of Canada Limited).

CANADIAN PACIFIC INVESTMENTS LTD. & CANADIAN PACIFIC SECURITIES LTD.:

Donat J. Levesque, Assistant General Solicitor;

G.J. van den Berg, President, Canadian Pacific Securities Ltd.; and Vice-President, Investments, Canadian Pacific Investments Ltd.

MASSEY-FERGUSON LIMITED:

John G. Staiger, General Vice-President, Corporate Administration.

It was agreed that the briefs submitted by the above organizations be printed as Appendices "A" to "D", inclusive, to the proceedings of this day. It was further agreed

that the brief submitted by the Canadian Chamber of Commerce be printed as Appendix "E".

At 12.35 p.m. the Committee adjourned consideration of the said Bill until Wednesday, March 5th, 1969.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

**THE SENATE COMMITTEE ON BANKING,
TRADE AND COMMERCE
EVIDENCE**

Wednesday, February 26, 1969.

The Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-17, respecting Investment Companies, met this day at 9.30 a.m. to give further consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, we are going to resume our consideration of Bill S-17 this morning. This is the day we start hearing representations from organizations that are concerned, interested, or both, in connection with this bill. We have five different organizations. The order, subject to change, would be, I suggest, to hear first the Industrial Acceptance Corporation Limited. They have filed a brief. Mr. L. E. Nichol, the President of that corporation, is here together with Mr. J. S. Land, the Executive Vice President.

Possibly, the way to deal with this is to have Mr. Nichol present his brief, after which he will be open to any questioning that the committee wants to indulge in. Is that satisfactory?

Hon. Senators: Agreed.

Mr. L. E. Nichol, President, Industrial Acceptance Corporation Limited: Mr. Chairman and honourable senators, I wish first to express my deep appreciation and that of my associate, Mr. Land, the Executive Vice President of Industrial Acceptance Corporation, for the opportunity you have given to us to present the brief prepared on behalf of our company.

I wish immediately to impart to you the good news that I have no intention of reading the brief to you today; however, I feel that I can be of some assistance by bringing to your attention certain of the highlights in the brief, and perhaps certain facts which may be of interest to you and which may not be fully expressed in the brief.

Industrial Acceptance falls within the class of what was called "near banks" by the Porter Royal Commission. We carry on most aspects of banking with the principal exceptions of the acceptance of deposits and

the provision of chequing services. In many areas we are in direct competition with the chartered banks; and, ordinarily, there is no banking requirement too large or too small to permit of it being dealt with by one of our companies.

Our consolidated assets are well over a billion dollars, and, as examples of the kinds of banking business in which we are engaged, I might say that in the past few years we have financed the construction of grain elevators, costing in excess of \$16 million; maximum size lakera, which transport grain from the Lakehead to these elevators at the mouth of the St. Lawrence and iron ore on return to Great Lakes ports; tankers operating in the St. Lawrence River, Seaway and Great Lakes; and tugs, barges and fishing vessels operating in coastal waters.

We have provided the financing for the purchase of commercial jet aircraft. We have supplied the financing required for the construction of schools, nursing homes and a hospital. We have provided the necessary financing in multi-million dollar amounts for the supply of manufacturing and industrial equipment to some of Canada's largest industries. At the same time, we have continued to provide purchase credit and consumer loan services each year for more than 500,000 Canadians from coast to coast.

The financing of our consolidated operations at the end of 1968 was provided to the extent of \$138 million by shareholders' equity; \$498 million in borrowings on securities having maturities at the time of issue of more than one year, and \$255 million of short-term borrowings, that is, borrowings having maturities of less than one year at the time of issue, and \$43 million in demand loans from most of the chartered banks of Canada. It will immediately be seen that the rapid turnover of much of the borrowings of the types we use makes mandatory the maintenance of a high standard of credit.

Among the voluntary steps we have taken to avoid any suggestion of a deficiency of credit for our companies is the maintenance of reserves in the form of a substantial portfolio of short-term investments of the nature of treasury notes, government bonds with short maturities and very high grade commercial paper. Our consolidated holdings of this type of paper

to held cushion fluctuations in the availability of funds in the money markets are ordinarily in the area of \$45 million. In addition, we carry aggregate lines of credit with Canadian chartered banks in amounts in excess of \$160 million and with United States banks in amounts in excess of \$70 million.

It will immediately be seen that a potential problem could arise in having to rely for credit, such as I have just mentioned, upon some of our greatest competitors in our fields of operation, that is, the chartered banks.

I think the foregoing remarks summarize our background position sufficiently, so I will now come more specifically to our interest in Bill S-17.

The Chairman: Before that, could you tell us something about the company and its shareholders?

Mr. Nichol: Yes. It is contained in detail in our brief, but IAC is a Canadian company, federally incorporated, and this is our forty-fourth year in business. We were originally a subsidiary of a United States company, operating as a branch office in Canada, handling the wholesale and retail financing requirements of Studebaker Corporation exclusively. In 1929—and in the interim the company had been incorporated as a Canadian company—the then Canadian management of the Canadian operations obtained an option for the purchase of the company from the U.S. parent. The financing at that time was arranged by way of \$1 million equity issue and \$1 million in debentures, and the company then became wholly Canadian owned, and has been since, and it has entirely Canadian management.

Up to yesterday we have had 10 million authorized shares, but at our board meeting yesterday a two-for-one stock split was proposed for the special meeting of shareholders to be held in April, so we will have 20 million authorized common shares, of which there will then be nearly 12 million outstanding.

Since the early thirties the stock has been listed on the Montreal Stock Exchange, the Toronto Stock Exchange and the Vancouver Stock Exchange.

Our company operates approximately 600 branch offices in Canada. Although it is 600 in total, that would include 10 branch offices in the New England States and eight in England.

Senator Walker: All your directors are Canadians?

Mr. Nichol: Except one, Arthur J. Morris, a resident of New York. He was the founder of our company. Indeed, he was the founder of consumer credit in North America, or in the world, for that matter. He was also the founder of the Morris Plan Banks.

Senator Thorvaldson: I presume you have some foreign shareholders, but not a great proportion?

Mr. Nichol: In excess of 95 per cent of our shareholders are Canadians, and they hold in excess of 95 per cent of the issued common stock. Does that answer your question, Mr. Chairman?

The Chairman: Yes, but in connection with the \$498 million of borrowings having terms in excess of a year, what is the security? In what form do you raise that money?

Mr. Nichol: I will get Mr. Land to give the detail of that, but that \$498 million represents in general borrowings of approximately a 20-year term. The secured long-term notes are secured by the pledge of our receivables, notes, conditional sales contracts and other negotiable instruments which are lodged with Montreal Trust Company as collateral for the note-holders, and it is maintained at a minimum, in the case of the parent company. Industrial Acceptance Corporation Limited, at 112½ per cent on that debt, and in connection with our borrowing subsidiary, Niagara Finance, the collateral is maintained at 107½ per cent.

In addition to the long-term secured notes, we have debentures of a long term which are not specifically secured but have a claim on the assets of the company after the secured noteholders have been satisfied.

Our bank borrowings are secured in the same manner as are our long-term and short-term notes—that is, borrowings of less than one year.

If you wish, I will carry on . . .

The Chairman: Yes.

Mr. Nichol: — to say that we do not in any way disagree with the necessity of action by the government in this general area. We are, however, very concerned that as the bill now stands, we may be just facing a continuance of procedures of the nature of investigations which, so far, have done little to re-establish the good repute of sound Canadian financial institutions. No one can deny that events like the insolvency of Alantic, Prudential and the like, have proven to be a serious detriment to the whole financial community in Canada, and particularly to a company such as ours.

Apparently, anyone who could rent a ten-foot office and afford to paint a name on the window has been able to say that he is in the finance business and, unfortunately, many investors, including those on the international scene, have been unable to distinguish between legitimate businesses and those which, through incapable management, dishonesty, or both, have caused untold harm.

It is true that the major debacles have been in the area of provincial companies, but the investment dealer in New York, the insurance company in Chicago or the banker in Los Angeles does not readily

distinguish between one type of Canadian company and another.

Subsequent to the major crashes of certain companies, the Federated Council of Sales Finance Companies, of which we are a member, has worked extensively with provincial government bodies to try to set up adequate reporting systems and to avoid, to the extent possible, a repetition of the great bankruptcies that have occurred. Unfortunately, there is no real assurance that these have ended.

I point this out because Mr. Humphrys and Mr. Hockin have expressed the desire of their departments to have an interval of two years during which they can study the general nature of the operations of each class of company which would come under their jurisdiction.

In the transcript of the proceedings before this committee on January 29, 1969, I note, at page 175, that Mr. Hockin, the Assistant Deputy Minister, Department of Finance, commented upon studies that had gone on with investment dealers concerning the business of finance companies and, as I understood Mr. Hockin, he said that this area is one in which more work has been done in the financial community than any other.

I have already had occasion to mention the joint studies made by provincial authorities and the Federated Council of Sales Finance Companies, and you will see, on page 1 of our brief, references to Appendix III and Appendix IV, which are filed with the clerk of this committee, which deal with the nature of the information which sales finance companies have agreed upon as adequate disclosure for provincial purposes.

Apart from these areas, there have, of course, been the extensive studies of the Porter Royal Commission on Banking, and honourable senators will find, at pages 4 and following of our brief, extracts from that report dealing with companies such as ours and recommendations which, in our view, would solve a great many of the problems relating to Canadian financial institutions, if adopted by Parliament.

Briefly stated, the recommendations of the Porter Royal Commission were:

- (1) that all "near banks" such as our company, should be brought under federal jurisdiction;
- (2) that provisions of the general nature of those in the Bank Act concerning inspection by the Inspector General of Banks, and the like, should be made applicable to "near banks";
- (3) that such institutions should be given a title including the word "bank" which, like the title "Savings bank", would indicate the character or background of their business;

(4) that they be required to keep reserves in respect of their short-term obligations;

(5) that they be required to report to the Inspector General of Banks all loans or investments in excess of 5 per cent of capital and reserves, as well as any credits to directors or enterprises with which they are associated.

The only one of the recommendations of the Porter Commission which I have just cited which probably could not be initiated now with any substantial hope of accomplishment would be that requiring that all "near banks" should come under federal jurisdiction. We would support such a recommendation if presently feasible, but we have little hope that it could be promptly accepted in the present climate of federal-provincial relations.

We do think, however, that much of the intent of the recommendations of the Porter Commission in this respect could be accomplished by permitting provincial companies which met the required tests of the federal act to become licensed under the federal act. There is presently analogous legislation concerning provincial companies in relation to the insurance of deposits.

We are, therefore, submitting to the honourable members of this committee that all of the recommendations of the Porter Commission should be applicable to all federal companies failing within the class mentioned by the Commission and that:

(a) they should be applicable to any provincial company which applies to be brought under the regulations and which fulfils the required qualifications; and

(b) that there be provided a line of credit of last resort by the Bank of Canada or other governmental body in an amount equal to the reserves provided by such companies in order clearly to establish their credit.

We are convinced that the separate designation of such companies and the character given to them by the nature of the inspection, the reserves to be provided and the line of credit of last resort to be available, would almost immediately create in the minds of the international financial community the segregation between such corporations of a reputable nature and those which, in the past, could not be distinguished from them and have, in consequence, caused tremendous harm to the whole Canadian financial community.

The fact that preferred credit status would be accorded by the financial world to institutions falling within the class of such banking institutions which would be subject to federal jurisdiction, would very soon attract companies of provincial origin, whose acceptance of federal regulation would give them the

required status to permit of the financing of their operations in the amount required and at reasonable cost.

We have suggested that this class of banking institution might well be referred to as "industrial banks", but the title given is not of great importance provided that it includes the word "bank" with some qualifying adjective, as suggested by the Porter Commission.

At page 15 of our brief we have recommended that a new Part III should be included in Bill S-17 to incorporate the recommendations contained in our brief, and which I have just summarized. Whether done this way or by separate legislation is immaterial.

There has been some suggestion that the definition of companies to fall under legislation concerning "industrial banks", as found on page 9 of our brief, might not be sufficiently wide.

With all the respect that I have for those who might make such a suggestion, I would say to this committee that once we excluded chartered banks and trust and loan companies from the definition as would be done, it would be hard for any company of the class we are considering to carry on business and still not fall within the definition we have given.

Another objection I have heard is that credit lines of last resort, if provided, might also be requested for trust and loan companies. With the advent of deposit insurance, such credit lines are, of course, not nearly as necessary for trust and loan companies but, should experience demonstrate their necessity, then a provision requiring reserves such as we are recommending and the provision of such credit lines to those having the required reserves would, in our view, be of benefit to the whole country.

The past three or four years have seen some very unpleasant events occur in Canada, particularly of the nature of those relating to Atlantic, Prudential and the like, and I can assure the honourable senators sitting here today that we have had to devote a very great amount of time to the reassurance of the international financial community, particularly in the United States, concerning the basic solvency and good faith of reputable Canadian corporations.

Therefore, honourable senators, we do not think that the Canadian financial community can stand another two years of uncertainty.

It is our respectful submission to you that all of the basic information required for the enactment of effective legislation is now available and that it is clearly in the interests of the whole Canadian nation that prompt measures be taken to re-establish the credit of our Canadian financial community in the minds of the international financiers. In the recommendations contained in our brief and in my remarks here today, we do not overlook the fact that nothing is constant but change. We have in mind that it is in

the best interests of our country as a whole, that a strong competitive climate be maintained as between one type of financial institution and another. We believe, after the most careful consideration, that the measures we have suggested would be adequate for that purpose under present circumstances, but also wish to repeat that changes and improvements will probably be required as experience with these new measures develops over a period of time.

Mr. Chairman and honourable senators, may I once again express my most sincere appreciation of your courtesy in allowing me to appear, and your patience in listening to my presentation.

Senator Desruisseaux: Mr. Chairman, as the sponsor of this bill in the senate may I say that it had its birth in certain events that took place over the past few years. I think it is obvious that legislation such as this is needed, but there is something I should like some light thrown on. Mr. Nichol, you may possibly be aware of what is the counterpart of this legislation in the United States. Do you know what American legislation there is in respect to the control of finance companies?

Mr. Nichol: Senator Desruisseaux, I regret that I am not competent to answer that question, but I do recognize the fact that they have not had the proportion of bankruptcies, defaults, and problems such as have prevailed in Canada since early 1965.

Senator Desruisseaux: You are not aware of whether this is because of a certain law that exists that controls . . .

Mr. J. S. Land, Executive Vice-President, Finance, Industrial Acceptance Corporation Limited: I am not familiar, senator, with anything that by its nature imposes a control on the borrowing ratios related to capital and so forth in the United States. I think it would be reasonable to say that the disciplines imposed by the money markets and the capital markets are what have given stability in the United States. It does seem that perhaps institutional investors there have been sophisticated enough to be able to sort out the stronger companies from the weaker ones.

The Chairman: In the United States there is a law called the Investment Companies Act.

Senator Desruisseaux: I was trying to get that.

The Chairman: The administration of that seems to work in conjunction, in some way, with the Securities and Exchange Commission. It is quite a lengthy text and I have been busy wading through it from time to time. It is directly on investment companies. There is even a definition of companies that buy and sell securities and trade in securities; generally they are the ones covered there.

Senator Leonard: Is it a federal act?

The Chairman: It is a federal act, yes.

Senator Leonard: Applicable only to federal companies or applicable to all companies? Is it applicable to Bahamian companies, for example?

The Chairman: I would think it is applicable to all companies in addition to whatever the state legislation may be, in the same way as the S.E.C. is applicable.

Senator Desruisseaux: On page 14, in the second paragraph you say:

What appears to be essential at the present time is to avoid the appearance of the provision of adequate regulation while doing nothing, in effect, but duplicating provisions, presently applicable under provincial statutes.

Are you aware of the statutes of, for instance, the Province of Quebec governing this matter compared with what we now have before us?

Mr. Nichol: Certainly in the Province of Ontario they are under the Ontario Securities Commission.

Senator Desruisseaux: But in Quebec?

Mr. Nichol: I do not think so.

Senator Desruisseaux: Or other provinces?

Mr. Land: Except that we file the prospectus that must be filed with the provincial securities branch.

Mr. Nichol: We file the prospectus each year in respect of our medium term issues over one year and under ten. That is the same prospectus that we file with the Ontario Securities Commission.

Senator Thorvaldson: I am intrigued by your recommendation concerning the term you use, "industrial banks". I was wondering if you would be prepared to comment on the effect it would have on a situation such as that of the Atlantic and Prudential failures if there were a federal system of investigation such as there is for banks and trust companies.

Mr. Nichol: I would say that for those companies to call themselves industrial banks they would have to be either a federally incorporated company or a provincial company licensed under the federal act; they would be required to maintain reserves, say to the extent of 12½ per cent as we have suggested, of their short term liabilities, and they would be required to report to the Inspector General of Banks or other governmental authority any loans in excess of 5 per cent of their capital and reserves.

You may recall that much of the trouble with Atlantic was due to particularly large loans not well secured. As I recall from the circumstances of that time, mid-1965, they had a very substantial amount advanced to a cattle raising farm in the Cornwall area, the amount being, I think, well over \$1 million. I further recall that they had a loan of, I believe, \$8 to \$10 million made to a hotel beach resort establishment in the Bahamas. That is a lot of shareholders' equity or lenders' funds to put at risk in one risk venture. If they had conformed to requirements such as we have proposed, and as recommended in the Porter Commission Report, these companies would have been precluded from getting into that highly dangerous position.

Senator Thorvaldson: I am thinking of more than merely reporting. As I understand it, the Department of Insurance sends inspectors or accountant auditors into trust companies periodically.

Mr. Nichol: Yes, they do.

Senator Thorvaldson: They look at the books.

Mr. Nichol: They do.

Senator Thorvaldson: They talk to the people involved in these transactions. I understand there is a similar type of inspection for banks; there is considerable personal contact. Would that be a factor in improving conditions?

Mr. Nichol: I would say definitely, yes. We are strongly in favour of adequate inspection being carried out, such as is presently conducted by the Department of Insurance with the small loan companies, with casualty insurance companies, life companies and trust and loan companies, which I believe come under the inspection of the Department of Insurance. We have had considerable experience with the Department of Insurance inspection staff. They deal with three companies in our group at the present time: Merit Insurance Company, which is our casualty subsidiary; Sovereign Life, which is our life subsidiary; and Niagara Finance Company, which is our consumer loans subsidiary. We find that their inspections are frequent and thorough. In recommending inspection of industrial banks, merchant banks or what have you being carried out by the Inspector General of Banks, we concur mainly with the recommendations of the Porter Commission. On the other hand, we have the highest regard for the competence of the Department of Insurance and their inspections.

Senator Thorvaldson: I am sure we all have. Suppose before the collapse of the two companies we have been talking about Department of Insurance inspectors had been in there continually over a term of two, three, five or ten years, calling regularly upon

these companies. Do you not think they would have caught up with some of these things?

Mr. Nichol: I think it would have come to light sooner. Had there been appropriate legislation at that time I think the bankruptcies may well have been prevented, because these high risk lending activities in large individual amounts would have prevented by the regulations of the act.

Senator Connolly (Ottawa West): I think Senator Thorvaldson is quite right in stressing the unfortunate results of the bankruptcies of the two concerns he mentions. Have you any information whether there were a comparable number of bankruptcies of comparable size in the United States in this industry?

Mr. Nichol: An extremely smaller proportion. I can think of perhaps two or three, but that is out of a great multitude of companies of this type.

Senator Connolly (Ottawa West): Not of the size that has been mentioned?

Mr. Nichol: Not one proportionately of the size of Atlantic, for example.

Senator Connolly (Ottawa West): Mr. Nichol, your statement this morning was very clear and your brief is a very good one. I wondered if it would be appropriate to suggest that perhaps the brief might be printed as an appendix to our proceedings of today.

The Chairman: Does the committee so order?

Hon. Senators: Agreed.

(For text of brief, see Appendix "A".)

The Chairman: Now may I ask you a question, Mr. Nichol. It is quite obvious from reading the definition of "Business of investment" in the bill that your company would come under that description. In other words, you do borrow money on the security of bonds, debentures etc?

Mr. Nichol: Yes.

The Chairman: You do make loans of a secured nature?

Mr. Nichol: We make loans. We do not invest in equities.

The Chairman: You make loans.

Mr. Nichol: May I say, with respect to the Prudential affair, Prudential was not a finance company in our sense of being a finance company nor would it qualify as, say, an industrial bank such as we propose, because

much of Prudential's activity was the borrowing of money, short term as well as long term, and re-investing those borrowings in equities. We do not invest in equities. We do more purely a banking or lending function in the consumer, industrial, and commercial fields.

The Chairman: As I understand you, you do support and believe in the matter of inspection.

Mr. Nichol: Yes, we do very strongly.

The Chairman: To prevent fraud and to catch some of these developments before they get to a stage where there are losses. What you say is that the finance company should be excluded from the general application of this bill and should be the subject matter of a separate bill or a separate part of this bill.

Mr. Nichol: Yes, because we do not consider that we are an investment company in the general description or definition that would apply to investment companies. I believe the term investment company has traditionally applied to the investment dealers and stockbrokers and mutual funds, for example.

The Chairman: So that you, for the reasons stated in your brief and stated here this morning, think there should be a separate part in the bill or a separate bill and that the procedures for inspection, et cetera, should be pretty well in line with those which are followed in relation to banks?

Mr. Nichol: Yes.

The Chairman: In life insurance companies?

Mr. Nichol: Yes.

The Chairman: And small loan companies?

Mr. Nichol: That is right.

The Chairman: Yes.

Senator Leonard: Mr. Nichol, would you refresh my mind on the Porter Commission recommendations. Your suggestions, of course, are that you agree with these recommendations in so far as federally incorporated companies, like your own, are concerned. Did the Porter Commission also stipulate that in that case you would have the right to take deposits?

Mr. Nichol: No, I do not believe they did. We are not seeking the right to take deposits.

Senator Leonard: The proposed definition of deposits, would really be demand or savings obligations and would exclude your type.

Mr. Nichol: It would exclude demand deposits or savings accounts and current accounts. I feel we should be subject to the inspections and controls as recommended by Porter, because we do issue short-term secured notes of a maturity of 30 days to 365 days, and I think the Porter Commission Report referred particularly to notes of a term of up to 100 days.

Senator Leonard: That would be the dividing line of defining a deposit?

Mr. Nichol: We feel we should be subject to inspections, notwithstanding the fact we do not take demand deposits. We have no demand liabilities outside our bank loans.

Senator Leonard: Then you recognize that this requirement could not be applied to provincially incorporated companies of your character unless they voluntarily applied and in that case if they did not apply they would not be entitled to use the word bank?

Mr. Nichol: That is right. They are a different animal and the lender recognizes that they are not subject to federal inspection.

Senator Leonard: If they wanted to use the word bank . . .

Mr. Nichol: They would have to conform to the provisions of the legislation.

The Chairman: Are there any other questions?

Senator Connolly (Ottawa West): I think it has been clear what Mr. Nichol said in so far as the industry that he is engaged in and perhaps represents, because there are other companies in it. It seems to be in quite a different category from what is contemplated in the definition of investment companies as defined in the bill.

The Chairman: Exempt. You remember when Mr. Humphrys was giving evidence, he said they drew it as broadly as possible in the beginning and you do have one provision and that is the use of some or all of the assets of the company for making loans, whether secured or unsecured.

Senator Connolly (Ottawa West): There is no doubt about that. This catches them. This is the basket provision that catches them, but this seems to be an industry that is of a different order from the others that you have been describing in answer to Senator Leonard's and Senator Thorvaldson's questions.

Senator Phillips (Rigaud): Mr. Chairman, as the initial critic of this bill I would like to put a question.

On the assumption that the definition of investment companies was changed and contracted, would you have any basic objection of your company coming under this bill and the supervision of the Superintendent of Insurance rather than being shifted over and regarded as a banking institution and coming under the supervision of the Inspector of Banks?

Mr. Nichol: I would feel, Senator Phillips, that even recognizing such a change, that investment companies, as they are generally known, would still be carrying on a business entirely different from the type of business which we carry on.

Senator Phillips (Rigaud): So you would adhere to the fundamental principles?

Mr. Nichol: Yes, we would, but I would say on the subject of inspection by the Department of Insurance that we would have no objection to supervision and inspection being carried out by the Department of Insurance.

Senator Phillips (Rigaud): Do you wish to be segregated from the normal. . .

Mr. Nichol: Yes, I feel in the interest of stability and sound financial structures in corporations of our type it should be spelled out in detail, as recommended by the Porter Commission and be separate.

The Chairman: As I understand it, Senator Phillips, what he is saying is that the label investment company is not the kind of a label that they should be obligated to wear or should march under, because their business is not in that sense investment.

Senator Phillips (Rigaud): There might be a question of a revision in the definition and it might be desirable to take a review in due course, having regard to the proposed revision that this committee may suggest in the terms of the definition.

The Chairman: The brief does propose a definition.

Senator Phillips (Rigaud): Yes, I know, but the brief proposes a definition on the assumption that the present definition of the investment company is not changed. It is in the light of the present definition of an investment company that the representations were made.

Senator Connolly (Ottawa West): Is not the emphasis, Senator Phillips, the other way? As I understand what has been said and in the brief, regardless of what may be in the definition with respect to investment companies as such, this industry is an industry of its own order and therefore should be segregated in a separate section of this bill to meet the requirements of this special industry in another bill.

Senator Thorvaldson: May I ask the witness a question in that regard? Supposing your thinking was adopted in regard to industrial banks and supposing you did have the inspections which we have talked about, is there any reason why the same principles should not apply to the other companies that are real investment companies, as we know them? Is it fair to ask you that question?

Mr. Nichol: I would say it is not fair to ask me that question. I am not in a position to speak for the investment companies. It may well be that special inspections, supervision and controls apply to them. The nature of the business of investment companies is completely different from the nature of our business.

Senator Thorvaldson: That is why I asked your opinion. Had there been inspections of Prudential and Atlantic over a period of years, by the Department of Insurance, is it your opinion that the things that brought about their failure might have been caught?

Mr. Nichol: Yes.

Senator Willis: Do I understand the brief will be annexed to the proceedings today?

The Chairman: Yes. Thank you, Mr. Nichol and thank you Mr. Land.

Mr. Nichol: Thank you very much, Mr. Chairman and senators.

The Chairman: Honourable senators we turn now to witnesses on behalf of the Canadian Manufacturers' Association. We have Mr. H. J. Hemens, chairman of the Legislation Committee of that association. Mr. Hemens, would you introduce those whom you have with you?

Mr. H. J. Hemens, Q.C., Legislation Committee, The Canadian Manufacturers' Association: Mr. Chairman, honourable senators, I have with me Mr. H. S. Shurtleff of The Canadian Manufacturers' Association and Mr. J. E. Hughes, who is acting as counsel to me on this occasion.

Permit me initially to express our appreciation on behalf of The Canadian Manufacturers' Association, my colleagues and myself, of this opportunity to be heard by you on this bill. Like my predecessor, Mr. Nichol, I would ask your tolerance to permit waiving the reading of our brief, which I think you have before you and which is not very lengthy, and in lieu thereof comment briefly on some aspects of that brief and on some aspects of the bill.

Essentially, we, The Canadian Manufacturers' Association, are concerned here this morning with the status of manufacturing companies under Bill S-17 and our brief is therefore pointed essentially to the

designation of investment company and business in investment.

We find it rather strange that the drafters of this bill have been unable to find a definition of "investment company" for the purposes of such an act, when such definitions in fact exist. In the case of the United States of America, a very sophisticated country in this field, the definitions clearly exclude the manufacturing area.

The answer may lie in the various statements of Mr. Humphrys, Superintendent of Insurance, before your committee, to the effect that he is not quite sure what he is looking for other than masses of information. If the Government were to require all men whose age is 50 and over to report to the police station daily and describe their activities so that in due course the Government might decide what a crime is, I think we would find it a matter of some wonderment—and yet, essentially, this is not a very different proposition.

Surely one should start by knowing what public interest it is desired to protect, and then proceed to protect it. It is submitted that we might start with the narrow definition and expand it as experience dictated such an expansion.

Despite Mr. Humphrys' views, fulfilment of the requirements of the act will be costly. Senator Molson spoke to such effect in the hearings before the committee. Not only would it be costly, but wasteful and unproductive, at a time when serious attempts are being made by manufacturing companies to keep their costs down. It is suggested that we might operate on a basis to make a filing of information and requesting exemption; but if I read Mr. Humphrys' testimony correctly before this committee, there would be no hope of achieving any exception in the period at least of the first year.

We are concerned also with the manufacturing company which might well be caught in a temporary position. I am informed—I am not an expert in the field of finance—that there will be occasions when a surplus of cash entering the coffers of the company might well be placed, over a very short period, with a view to earning interest. In that event, a company otherwise not caught by the definition, on a very temporary situation might be caught.

It is submitted that consideration should be given in respect of a proper definition to provide for a minimum period of time during which the excessive assets described in the bill would be used for the purposes set out in order to qualify as an investment company—it may be this should be a period of six months.

I am informed, on what I believe to be good authority, that we have some rather difficult situations throughout the country. A manufacturing company, I understand, in the Province of Quebec must incor-

porate a Quebec corporation for mining, gas and oil leases. I do not know whether this is true in other provinces or not, but if it were you could have a manufacturing company intended only for the purposes of manufacturing, required by the laws of the provinces, so to structure itself and possibly to be caught under the present definition of the act.

Reference has been made on occasion to so-called designated area companies. I am not too aware of all the intricacies of this matter but I am told, on reasonably good authority, that it was considered desirable, in respect of the former legislation on "designated areas" to set up separately incorporated companies. Again it is a question of structure. It does not seem to me that a structure based on provincial requirements, on tax requirements, or on sound commercial reasons, unless it is otherwise immoral or fattening, subjects a manufacturing company to provisions intended for investment companies.

The Chairman: Mr. Hemens, on that point, in order that a manufacturing company might be brought into the purview of this bill, it must employ 25 per cent or more of its assets in investment, and it must be a company that has borrowed money on the security of its assets. Now, when you were saying that possibly there should be a period, say of six months, within which a company could temporarily use surplus money without being required to account, there is the other aspect, too, that it may well be that the borrowing of such a company can be identified in the structures that exist and in the equipment for their commercial and manufacturing operation, and that the borrowing in no sense is tied into the money which they use for the purpose of investment. The major question, then, would be whether in those circumstances, unless the borrowing is tied into the money that is used for investment, whether they should come under the scope of the bill at all. What do you say to that?

Mr. Hemens: To answer that, Mr. Chairman, first of all I do not believe they should come under the scope of the bill in any event.

Secondly, without being an expert in the field of accountancy, it seems to me that, to ensure at all times beyond reasonable doubt that moneys raised by way of loan, debenture, security issue, etc., have not been used for the purpose of investment in the shares of the controlled subsidiary, may well require a degree of accountancy beyond that which is justified for commercial use.

The Chairman: I should have added a qualification. When I was using "investment" I meant "outside investment" because I do not think there is any intention in this committee—it may be that I am speaking too generally at the moment—to ask that investment of a parent in a subsidiary, which is a tool

to help it to carry on some of the manufacturing operations, should be an investment for the purposes of this act.

Mr. Hemens: On that basis, Mr. Chairman, you, I think, have answered most of our problems.

The Chairman: Well, I was only expressing a viewpoint for the purposing of inviting some discussion.

Mr. Hemens: May I just refer to two other points rather briefly? It is noted that, because of the jurisdictional aspect, the bill can extend only to federally incorporated companies. Of course, that allows for a great area of escape by simple incorporation of provincial companies, which I do not believe would be for the benefit of the country as a whole, under those circumstances. One brief reference to, I think it is clause 22, the provision which permits of the establishment of regulations. As a matter of principle, Mr. Chairman, we find ourselves opposed to any provision which permits of the establishment by regulation of substantive law. We think that substantive law should be found in the statute and that regulations should deal with matters of administration.

Thank you very much, Mr. Chairman.

The Chairman: Are there any questions?

Senator Thorvaldson: Mr. Chairman, I was going to ask if you would follow-up to a certain extent your remarks in regard to the personal view that you expressed. How far are you willing to back that personal view up? If you say that you are convinced that that is so, then I am willing to follow it up. Would you care to comment on that again?

Senator Connolly (Ottawa West): You are making the Chairman the witness.

The Chairman: Mr. Hemens is the witness, senator. We have not reached the stage yet where I have to firm up the views that I express. That will take place after we have heard all the submissions. We must hear also Mr. Humphrys' replies. I was indicating, or suggesting, a viewpoint to Mr. Hemens in order to invite his comments. You should be able to judge—maybe you can—whether that reflects a solid view that I have or whether it was merely for the purpose of inviting discussion.

Senator Thorvaldson: Your viewpoint, Mr. Chairman, is more mature than mine.

Senator Connolly (Ottawa West): Mr. Hemens, I take it, is quite firm in his view that manufacturing companies with subsidiaries really do not fall into the class of investment companies as such. We have a brief

here, for example, from Massey-Ferguson and others from Dominion Textile and Alcan.

These companies make a very special case, as being manufacturing companies with subsidiaries which do their financing for themselves sometimes and for the subsidiaries. Do you think that they should be excluded from the general basket definition of investment companies because the main purpose of their business is manufacturing? Is that the message that you want to get across?

Mr. Hemens: That is fair. As a matter of interest, you are probably well aware that the definition of "investment company" in the Investment Company Act, 1940, of the United States, definitively and clearly excludes such companies.

Senator Connolly (Ottawa West): Yes. I see that in the appendix to the brief memo that you have made. In other words, what you are saying to us, and really what you said to us at the end, is that when it comes to clause 22, inevitably, the person who exercises the discretion for the making of regulations is going to have to compartmentalize these various industries. And, speaking for manufacturing industries, you think that they will have to be put into a special class and dealt with in a special way—namely, excluded from the provisions of this act.

Mr. Hemens: I would much rather they were excluded completely from the provisions of the act. Then we would have no problem of regulation-making in that area.

Senator Leonard: What would you say, if a company like General Motors Corporation owned and controlled a company called General Motors Acceptance Corporation which handled all or a good portion of the finances of the sale of the motor cars? Could General Motors Acceptance Corporation be an investment company?

Mr. Hemens: That is a very difficult question, senator. My personal view would be that they are subject to the views expressed here a little earlier by I.A.C. They would be, in my opinion, an investment company and should be subject to the provisions affecting investment companies.

Senator Leonard: Mr. Nichol did not think they should be an investment company, but rather that they should be a near bank or type of industrial bank.

Mr. Hemens: I defer to Mr. Nichol in that area, sir. I know nothing about it.

Senator Desruisseaux: Mr. Chairman, in the submission of the witness, it is suggested that the definition of "investment company" as set out in clause

2(1) (f) (i) and (ii) should be amended so as to replace the words "25 per cent of the assets" by the words "50 per cent of the assets". What is the basis for changing it to 50 per cent?

Mr. Hemens: There are two things involved, senator. First of all, I take the view that an act respecting investment companies is or should be intended to deal with companies primarily concerned with investment. Consequently, 25 per cent of the assets, in my view, would not constitute "primarily". Fifty per cent of the assets would come very close to so doing. Secondly, the Investment Company Act of the United States refers to 40 per cent. It seems to me that 50 per cent is a fairer division.

Senator Desruisseaux: It is arbitrary.

Mr. Hemens: I think they are both arbitrary, sir.

Senator Phillips (Rigaud): Have you available for the guidance of this committee, sir, a definition of a manufacturing company, on the assumption that manufacturing companies will be excluded from the purport of this act?

Mr. Hemens: That is a very good question, senator. I do not have one. I would be glad to draft one and submit it.

Senator Phillips (Rigaud): I think it would be very helpful, because, personally, I believe that the exclusion should be based not upon the amount of assets that are being used for investment, on account of the confusion to which our Chairman has referred in respect of the money being used, and the like. But, basically, it should not be too difficult, with your experience, to give us a definition of "manufacturing company".

Senator Connolly (Ottawa West): Just following that suggestion, Mr. Chairman, in view of the fact that we have specific briefs from various manufacturing companies of the type described by Mr. Hemens, if any of them are here and are to be heard later today, perhaps they might be able to help in providing such a definition as Senator Phillips (Rigaud) suggests, which I think would be helpful.

The Chairman: We will watch for it.

Senator Thorvaldson: Mr. Chairman, in regard to the definition of "investment company," it seems to me that there is a real contradiction between subclause (f)(i) and (f)(ii), because (i) says:

(i) incorporated after the coming into force of Part I of this Act primarily for the purpose of carrying on the business of investment, . . .

And I note the word "primarily", and (ii) says:

(ii) that carries on the business of investment and at least twenty-five per cent of the assets of which are used as described in subparagraphs (i) and (ii) of paragraph (b), . . .

Now, I make the suggestion that there is a real contradiction here and that the company described in subparagraph (ii) is not primarily in the investment business, whereas that is what seems to be intended by the former subparagraph.

The Chairman: Quite true, and there is even confusion added to the contradiction you are talking about, because the definition of the "business of investment" means you must borrow money, and then you must loan or invest money or assets of the company at the stage when the company is incorporated.

Say this bill passes into law and the company is incorporated, it may take powers to carry on the business of investment, but the mere fact it is incorporated in that form after the passing of this bill makes it an investment company before it borrows a nickel, and before it makes any investment. What has it to make a return on at that stage?

These are things we will have to look at when we get to a consideration of the bill, and I do not think we should attempt to work this out with Mr. Hemens. I think this is a job we have to do.

Senator Thorvaldson: Yes, Mr. Chairman. I brought it up following the honourable senator's remarks.

The Chairman: Since the Canadian Manufacturers' Association have filed a brief, I think it should be appended to the proceedings of today.

Hon. Senators: Agreed.

(For text of brief, see Appendix "B".)

The Chairman: Did you have a question, Senator Desruisseaux?

Senator Desruisseaux: No, I was going to ask that very question.

Senator Connolly (Ottawa West): Mr. Chairman, to save time, perhaps unless we otherwise say so, all of the briefs should appear as appendices.

The Chairman: I think the orderly way to deal with it is that if people are being heard here and have filed a brief, we will print it. Whether we will print those that have been subsequently filed is another question.

Senator Connolly (Ottawa West): Yes, I was speaking of those who are here.

The Chairman: Yes.

Thank you very much Mr. Nichol and Mr. Land.

The next group is the Association of Canadian Investment Companies, headed by its Vice-President, Mr. J. V. Emory. Would you introduce your delegation, please?

Mr. J. V. Emory, Vice-President, The Association of Canadian Investment Companies: Mr. Chairman, I have with me Mr. W. I. M. Turner, President, Power Corporation of Canada Limited; Mr. R. de Wolfe MacKay, our legal counsel and counsel for Power Corporation of Canada Limited, who has also assisted in the preparation of the brief; and Mr. Esmond H. Peck, former Secretary-Treasurer, Association of Canadian Investment Companies.

The Chairman: You have filed a brief?

(For text of brief see Appendix "C".)

Mr. Emory: Yes, we have filed a brief, Mr. Chairman. My participation this morning is more in the way of opening remarks, if I may.

The Chairman: You can assume, correctly, that we have read the brief. I may as well have an order now to print the brief of this association as an appendix to today's proceedings.

Hon. Senators: Agreed.

(For text of brief, see Appendix.)

Mr. Emory: Mr. Chairman, honourable senators: The Association of Canadian Investment Companies appreciates this opportunity to make some supplementary representations to this committee respecting Bill S-17 and our brief, which was submitted last month.

Membership in the association now stands at 17 companies, as listed in Appendix "A" to the brief, having net assets exceeding \$500 million.

About half of the member companies are investment funds which hold rather broadly diversified portfolios; three or four might be termed management holding companies, having a relatively small number of investments and being actively involved in the management of some or all of the companies concerned. Then there are a few which combine the above characteristics in varying degrees.

Of the 17 member companies, 10 have no debt apart from current bank loans. Twelve have federal charters, but only five of these have any debt and they would appear to be the only ones subject to Bill S-17 in its present form. Nevertheless, our entire membership, together with the other companies also listed in Ap-

pendix "A" who have supported our submission, are greatly concerned about the bill and its possible serious threat to their effectiveness as pools of Canadian investment capital.

As you can see from the brief description of the association which I have given, it is composed of a variety of companies with different charters, different capitalizations, different objectives and different problems, all of which are loosely grouped under the heading of closed-end investment companies. In broad terms, however, our members can be divided into two classifications: the first, management holding companies, the largest of which is Power Corporation; and the second, portfolio investment companies, the largest of which is United Corporations Limited.

In deciding who should represent the association before this committee it seemed to us that it would be impracticable to ask representatives of all our members to present their various individual points of view in detail. For this reason we decided to limit ourselves to representatives of Power Corporation, speaking as a management holding company, and myself, representing United Corporations Limited and speaking for the portfolio investment companies. Furthermore, in order to prevent overlapping and to save time, we decided that I should speak in general terms and leave any detailed discussion of the bill itself to the representatives of Power Corporation. May I add that I intend to be as brief as possible.

I am sure you will understand, Mr. Chairman, that I can only speak with sure knowledge about United Corporations Limited, of which I am president, but I feel that in giving a short description of the operations of that company I will be describing to the members of this committee a typical representative of the portfolio type of closed-end investment company. Obviously, however, there will be differences of detail among various individual companies.

Briefly, then, as far as United Corporations Limited is concerned, we are a federal company but have had no debt outstanding since 1958. We would, therefore, not be subject to the terms of Bill S-17 at present but would immediately become so if we issued debt to the public at any time in the future. While we have preferred shares outstanding in the hands of the public, they represent less than 10 per cent of the total capitalization of the company at the end of 1968. Our Class "B" shares, which are our common shares, are listed on the Toronto, Montreal and London (England) Stock Exchanges, and we have approximately 1,700 registered shareholders of those Class "B" shares.

At the end of 1968 the aggregate market value of the company's assets slightly exceeded \$88 million, of which over \$76 million was in the form of the common or convertible shares of 80 different com-

panies. No one portfolio holding, other than government bonds, exceeded 3 per cent of our total assets.

We have qualified from the beginning as an "investment company" as defined in Section 69 (2) of the Income Tax Act. I will return to this point in a moment and I will simply say, at this juncture, that in so qualifying we are probably in a minority among Canadian portfolio investment companies, whether of the closed-end or open-end, more usually referred to as the "mutual fund", type.

Our operations are managed by what we feel is an experienced group of investment specialists under the overall control of a responsible board of directors, all of whom have a very real feeling of dedication to the best interests of our shareholders. Should it, in our judgment, be in the best interests of those shareholders at some point in the future to apply a moderate amount of leverage to our capitalization in the form of debt, we would follow the normal underwriting procedure with all that it implies by way of full disclosure and compliance with the regulations of the securities commissions and the stock exchanges.

Furthermore, and I think this is extremely important, the market place itself would be the judge as to whether any debt instrument which we might issue was attractive enough by way of asset and income coverage to be acceptable to potential investors.

The Chairman: May I interrupt you there Mr. Emory I am thinking in terms Atlantic Acceptance. The market place did not make a very good assessment there on some of the securities that were issued.

Mr. Emory: With this I agree, sir. The majority of our debt that we had outstanding was held by what might be called professional investors. I think there is a major distinction between the type of operation that accepts deposits, or advertises widely that it would like to issue short term paper, or whatever it may be, and one that goes through the normal underwriting procedure—and by that I mean going to an underwriting house with full disclosure, and everything else that is involved.

The Chairman: Yes. Go ahead.

Mr. Emory: Gentlemen, I have described United Corporations, and I ask you whether this is really the type of company that you feel requires the kind of close and detailed supervision and regulation by a government department as provided by this bill. My own feeling is that it is not, and should you gentlemen agree with me I suggest that there is a much simpler and considerably more clear-cut method of excluding such companies than by subjecting each one as an individual case to the full regulatory procedure as set out in the bill. Aside from my innate distaste for the type of regulation involved—and by this I mean

legislation by regulation—I feel that the procedure laid down in the bill is, at least in the case of portfolio investment companies, unnecessarily complicated, expensive, and time-consuming both for the company, and for the government department concerned.

This brings me back to section 69(2) of The Income Tax Act, to which I made previous reference. In returning to it let me hasten to say that I have no intention today of entering into a discussion on the taxation of investment companies. This was, in fact, the subject of a separate submission by the Association to the Minister of Finance in November of last year, a copy of which is attached as Appendix "B" to our brief to this committee.

Senator Connolly (Ottawa West): At what page is that?

Mr. Emory: It is the separate blue book.

Senator Connolly (Ottawa West): Yes.

Mr. Emory: Reference is also made to Appendix "D" setting out the form which Section 69(2) would take if our recommended changes were implemented.

The point that I am making, and which is referred to at the top of page 4 of our brief is that here is a definition of an "investment company" which might well be the starting point for an exemption from the regulatory provisions of Bill S-17. It is important to realize in this connection that the definition given in section 69(2) is set out for taxation purposes, and that certain of the restrictions on investment policy, particularly sub-section (ba) which limits the amount of income receivable from foreign sources and which is the principal reason for many portfolio investment companies disqualifying themselves under the present section, are not really relevant to the requirements of Bill S-17. It seems to me, however, that it should be quite possible to work out a definition covering, on the one side, a reasonable requirement for portfolio diversification and, on the other side, a reasonable limitation of the ratio of debt to total capitalization and to specifically exclude any company falling within that definition from the regulatory provisions of Bill S-17.

In short, as far as portfolio investment companies are concerned, we feel that we should be exempt from government regulation providing we operate within very broad, but clearly defined, limits. Furthermore, we feel that these limits should be defined by statute rather than by departmental regulation. May I add that we would be delighted to cooperate in any way possible in arriving at a mutually agreed-upon definition of those limits.

Mr. Chairman and honourable senators, with your permission I would like now to turn the floor over to **Mr. Turner** who will speak for Power Corporation.

The Chairman: I would like to ask you a question, **Mr. Emory**. In the broad sense, the business of investment is the subject-matter of the operations of your company?

Mr. Emory: That is right, sir.

The Chairman: Now, you are proposing that there be an exception?

Mr. Emory: I am proposing that instead of the department having to examine each individual company in detail—mark you, I have no objection to reporting providing we stay within broadly defined limits, and I feel these limits should be set out in the bill, and should not be defined by departmental regulation—we should have a blanket exemption other than for reporting purposes.

The Chairman: Do you mean that the bill should be drawn with such definitions and guidelines in it so that you would be able to make the determination as to whether your operations brought you under it or not?

Mr. Emory: That is exactly it.

The Chairman: And you would make the first decision as to whether you were obliged to file or not?

Mr. Emory: I would not be averse to filing, sir, in order to have the finger kept on us, if you like. I do not think the detailed regulations which are provided by the bill are necessary providing we stay within what this committee, and the bill itself, define as proper limits.

Senator Connolly (Ottawa West): Are the guidelines the ones suggested at . . .

Mr. Emory: The guidelines are on the last page of the brief, sir—Appendix "D", which is page 13 of the yellow book.

These are our suggested recommendations for Section 69(2). In effect, these suggestions widen the range somewhat from the present act. Our suggestions, I must confess, were made for taxation purposes, and not for the purposes of Bill S-17.

The Chairman: What is a little confusing to me, **Mr. Emory**, is that you say these guidelines should be specifically set out, and as long as you operate within them you then have no obligations under the act, and yet you would be prepared to file. I cannot relate those two things.

Mr. Emory: By using the word "filing" I may have misled you, sir. What I meant was that we have no objection to the department's keeping an eye on our operations in order to be sure that we stay within this

definition, and this can be done by way of filing annual reports with the department. But, as soon as we go outside this definition then, whatever the full terms of Bill S-17 are, they would apply to us.

The Chairman: But you realize that once you have a definition setting out guidelines then the superintendent, if he is to exercise any function at all, must have the authority to check and inspect in order to make sure that you are within the guidelines.

Mr. Emory: I have no real objection to this. What I am looking for is a clearly defined area in which we can operate without regulation, particularly the type of regulation that seems to be implied in Bill S-17, where it is not what I would call statutory.

The Chairman: It may be that the exemption provisions in the bill go far enough for what you want.

Mr. Emory: Yes. I think my particular quarrel, if you like, Mr. Chairman, is with the definition of an investment company. I think it is all-embracing.

Senator Carter: Mr. Emory, you say you have 17 members in your association. Have you any idea of how many investment companies there are which would be affected by the act as it is presently drawn?

Mr. Emory: As a matter of fact, taking the act as it stands now, this would be impossible to forecast.

The Chairman: No, how many are there right at this moment?

Mr. Emory: How many investment companies are there?

Senator Carter: Yes.

Mr. Emory: Again, it depends upon your definition of "investment company".

The Chairman: Take the definition in the bill.

Mr. Emory: In the bill?

The Chairman: Yes.

Mr. Emory: I would find this quite impossible to answer because it seems to be all-embracing. I think may be we shall be dealing with this point in a few moments.

The Chairman: How many carry on investment in some form and do not borrow money?

Mr. Emory: I am afraid I cannot answer that.

The Chairman: Those are not under the bill.

Senator Thorvaldson: You listened to the discussion that the members of the committee had with Mr. Nichol of Industrial Acceptance Corporation Limited concerning his proposal for inspection and so on. I was wondering if it would create any great problem for you if such a system were decided upon and there were legislation requiring inspection, of a type similar to that made by the Department of Insurance or under the Bank Act, of all investment companies. Would that be very cumbersome for your company?

Mr. Emory: I do not think so particularly. I think what we would be frightened of, if you like, would be if the inspector, through the mechanism of the bill, reported; we would not know where we stood. We are getting into a detailed discussion of the bill now, which I would rather leave to the Power Corporation representatives, if I could. To answer your specific question, I do not think it would be particularly onerous for us to have an inspector come in and look at us.

Senator Thorvaldson: I think one of the main things we in this committee wish to avoid is to have a bill which creates a huge basket to take in myriads of companies that do not need inspection at all. Obviously, in the case of a company such as your own, as you have described it, with your assets, an inspector would come in and after his first visit would, I believe, determine that there was not very much to inspect, and future inspections would be fairly cursory. I mean, you do not borrow money. A system of this kind would lead to creating a large basket in which everybody has to file extensive returns and employ additional staff to do it. Would you be opposed to it?

Mr. Emory: I would be in favour of doing it which ever way is easiest. If it is easier for an inspector to come in and look at our books it presents no problem at all.

Senator Beaubien: Do you not publish very detailed reports anyway?

Mr. Emory: Yes, we do.

Senator Beaubien: What would an inspector find that was not in those detailed reports?

Mr. Emory: We normally publish our portfolio on a quarterly basis.

Senator Beaubien: You show everything there.

Mr. Emory: Everything.

The Chairman: You have to look at it more objectively than that. You would have to be prepared to make an assumption that at the end of the year the financial statement contains information that indicates

everything is going along properly. If a company is subject to the act I do not think you can make any such assumption. You may have all the good will in the world, but you would have to go in and check.

Senator Beaubien: One has there the auditor's report and everything else. They show their holdings, every holding they have. Anybody can look at it and see the true position, unless there were gross dishonesty. The custodian holds the securities; the auditor would check the bank balance and everything else.

The Chairman: Yet with all that we have had some colossal failures, have we not?

Senator Thorvaldson: I was going to say, that is exactly the problem here. With Atlantic and Prudential the auditors' statements apparently did not disclose the defects in those companies and the dangers. That is what we are talking about.

Senator Phillips (Rigaud): I should like to refer to the section of the act dealing with the right of inspection it is proposed to give and the right of putting a company into bankruptcy if it is obvious that it is heading for disaster. On the assumption that investment companies were exempt from the broader application of this bill involving regulation and so on, would you object to the right of supervision and the right of the Superintendent of Insurance, if he found your type of company was heading for disaster, to move in?

Mr. Emory: As a matter of principle, no. We are no more anxious to cause a calamity than anybody else.

Senator Phillips (Rigaud): That is all I wanted to know.

The Chairman: Now that Mr. Emory has made his statement I think we should order that the brief which has been filed be appended to the proceedings today. Is that agreed?

Hon. Senators: Agreed.

Senator Carter: I had supposed that all across Canada there would be at least one association of investment companies. Your association has only 17 members. Do you have a special definition of "investment company" or a special condition which restricts membership of your association?

Mr. Emory: No, we do not. This is a voluntary association. We lay down no regulations. The open-end funds, the mutual funds, have an association representing themselves in tax matters and matters such as this. We felt that broadly defined investment companies of the closed-end type should have a similar association. As I pointed out, our membership is rather diverse; we

consist of different types of companies. I would, if you like, define my particular company, a portfolio investment company, as being a true example of an investment company, but the definition is difficult to arrive at.

Senator Carter: But other investment companies are also associated in different organizations?

Mr. Emory: This I cannot speak to. As a matter of fact, the publicly-owned closed-end investment companies in Canada are not very numerous.

Senator Thorvaldson: Is Argus a member of your association?

Mr. Emory: Argus is not a member. This was a matter of choice on their part.

Senator Thorvaldson: Is the membership of your association given in your brief so that it will be in the appendix to the proceedings?

Mr. Emory: The membership is given as an appendix.

The Chairman: Even when we look at the list of members appearing in appendix A, it would seem to me that the title, the Association of Canadian Investment Companies, is drawn too broadly. For instance, the corporations supporting this submission are not members, are they?

Mr. Emory: No, they are not members.

The Chairman: There are such companies as Massey-Ferguson, Domtar and the Distillers Corporation. I am sure they have investments, but obviously their primary business is not investment.

Mr. Emory: They are not members of the association.

Senator Thorvaldson: It had been my view—perhaps I am wrong—that Power Corporation, say, was not really an investment company but more a holding company. Am I wrong?

Mr. Emory: I would prefer to let them speak on their own behalf in reply to that question.

The Chairman: Then perhaps we should hear from Mr. Turner. Thank you, Mr. Emory.

Mr. W. I. M. Turner, President, Power Corporation of Canada Limited: Mr. Chairman, honourable senators, I think the style of this presentation may involve the president of a company coming here and saying, "This is a good bill. Let us redefine it, but exclude me." No matter how we thought of redefining it, we

could not exclude ourselves, so we have to address ourselves to the bill and not the exclusions.

We would like to approach the matter in two ways. First we would like to have our counsel, Mr. de Wolfe MacKay, talk about the specific articles of the bill and then, if feasible, have myself talk in more general terms on how we would like to bring to this committee's attention our philosophy related to the bill.

As you know, sir, we are a closed-end holding company; under some people's definition a management holding company, and, under other people's, a conglomerate or an international company. We find it difficult not to take this bill extremely seriously. In addition to the people that are up in front, our comptroller of the company, Mr. Knowles, who is sitting in the back, is able to provide additional information if the senators require it. If I may, sir, I would like to introduce Mr. MacKay.

Senator Connolly (Ottawa West): Before Mr. MacKay starts, is he going to address himself from this blue brief that he has?

The Chairman: No, he is going to address himself, as I understand it, to the provisions of the bill.

Senator Connolly (Ottawa West): Thank you.

Mr. Turner: We are delighted obviously to answer any questions anyone may bring up . . .

Senator Connolly (Ottawa West): I wanted to get the paper straight.

Mr. Turner: . . . on the comment or the question one senator raised about closed-end funds. If you define these types of companies as those who have public shareholders, there are very few other closed-end funds that are not in this association. Argus is a very conspicuous example of one that is not. You can count those missing on two hands.

Mr. R. de Wolfe MacKay, Legal Counsel, The Association of Canadian Investment Companies: Mr. Chairman and honourable senators, in answer to the question as to what the scope of my remarks are to be, they are essentially not so much directed to the terms of the brief excepting that we have helped to prepare it. Any questions related to the brief I am quite prepared to answer and assist in that respect. My position at the moment before this committee is essentially representing Power Corporation and to give you some of the views we have about the severity of the bill in its present form and also to give you perhaps one or two examples of just how it would have affected our normal day-to-day transactions. I thought this committee would be more interested in how this would apply to us in the present form than it

would be to general interpretations in the Senate and its proceedings here. My purpose before you is more to say, as Mr. Turner said, we can be called a conglomerate, an investment company, a management company or called most anything and we therefore feel that when it comes to the definitions, the severity of the penalties to be imposed, the direction and control and the discretions, we had better show you some specific examples of how this would have affected us if the bill had remained in its present form.

I have prepared for your guidance a chart of Power Corporation and its various holdings. Mr. Chairman, if I may then proceed with the remarks which I have been instructed to give on behalf of Power Corporation. Power Corporation of Canada Limited is an investment, development and management company of the closed-end type. Directly, and through its investment company subsidiaries, it invests primarily in equity securities and normally takes an active role in the development of the enterprises in which it has committed funds, except for a small number of holdings of a purely portfolio nature. To accomplish its stated objective of investing creatively in Canada's future, Power seeks to make long-term equity investments in industries which have the potential for substantial growth and profitability; to concentrate its holdings in a relatively limited number of companies—suitably diversified by industry—which are or can become leaders in their respective industries; to assist each company to realize its full potential through developing and supporting competent self-contained management; and to encourage the development of improved management techniques and new technology, products and markets. Its shares are held by more than 18,500 persons, over 90 per cent of whom are Canadian.

The submission, in January, to the Senate Committee on Banking, Trade and Commerce by the Association of Canadian Investment Companies with the support of the group of Canadian corporations concerned with investment of necessity could only touch on the highlights of those portions of Bill S-17 which on the face of them appeared to those making the representations to be pertinent, and some of the comments and recommendations by the same token had to be rather general in their terms.

At the time the submission was made, the only information available to those submitting the representations was the text of the bill itself, together with, of course, the general remarks made by members of the Senate at the time of its first reading. Since that time we have had the advantage of reading the *Hansard* transcripts of certain senators' remarks at the time of second reading and of the proceedings before the committee and, in particular, the remarks made by the Superintendent of Insurance and the Assistant Deputy Minister of Finance. A somewhat clearer picture of the purposes of the bill has therefore emerged from the representations made by these two Government

officials and we are most appreciative of the committee's agreement to postpone our appearance before the committee until after the Government had made its submission.

We think that the Superintendent of Insurance has made it abundantly clear that at the present moment he is struggling in the dark and that his basic requirements at the moment are for information. We would suggest, however, that when the proposed legislation comes to the point of imposing restrictions on the activities of companies before the problem has been analysed.

We think the committee will understand the uncertainty and apprehension that is bound to exist in the minds of the boards of directors and of management of closed-end investment companies and of industrial holding companies when they feel that they are exposing themselves and their companies to the severe indictments and penalties provided by the bill in their normal day-to-day carrying-on of their business.

We would suggest, therefore, that the Government officials move slowly deliberately and carefully so as to ensure that legislation, when it is brought down, will be effective and that, in the interim, normal business operations will not be unduly interfered with.

We would suggest for the consideration of the committee the answers to certain basic principles, that is, a question and answer method of inquiry.

These questions of principle may be divided into six categories, substantially as follows:

1. What are the purposes of the bill, (a) subjectively, in the sense of what is stated to be the intent of the bill by its proposers or by Government officials, on the other side, what are the purposes of the bill and (b) objectively, in the sense of what objectives can be derived from the provisions of the bill itself? Unquestionably, the subjective intent, as stated by the proposers or Government officials or by notes, is very useful but cannot of itself constitute an interpretation of the specific provisions of the bill.

In this respect I would remind the committee that the Superintendent of Insurance and the deputy minister, from time to time, did make remarks. We can appreciate very much that this is what their purpose and intent is, but all we can look at is what are the terms of the bill, not how the Government intends to make use of the bill or interpret it themselves. The second question I would like to ask:

2. What are the objectives as appear from the bill itself?

3. Are such objectives to be accomplished by the specific terms of the bill or by regulations?

4. Does the bill clearly state how these objectives are to be achieved?

5. Does the bill go farther than is necessary to accomplish the objectives?

6. Is the bill likely to interfere unduly with normal acceptable business operations?

The answers to these questions seem, briefly, to be the following:

1. The purposes of the bill, subjectively and objectively: Subjectively, the primary purpose of the bill appears to be to protect the public investing in debt securities, either by the discretion of the minister appointed to administer the bill or by the broad powers to regulate by orders in council. The secondary objective appears by implication to be to protect the public investing in equity securities by similar measures.

It is with this secondary objective that of course we are most concerned. Mr. Nichol has expressed the views of those companies that are in the debt market, and we are not, and we have no recommendation to make in that respect. We are directing our minds solely to investment companies in the normally accepted sense of that term.

2. Secondly, what are the objectives as appear from the bill itself? For this purpose, the significant sections of the bill could perhaps be divided into three separate categories. They are:

(i) those sections which deal with the gathering of information such as gathered through the various extensive and detailed returns by the Bureau of Statistics or under the Corporations and Labour Unions Returns Act, the Canada Corporations Act and the Income Tax Act, most of which, with the exception of annual returns under the Canada Corporations Act, is confidential information;

(ii) disclosure to the public of information obtained, which is the basic purpose of the Securities Acts of the various provinces including, what we understand is presently being proposed, a National Securities Act, the purpose of which is to give to the public full information in order to enable them to reach an impartial judgment concerning securities offered whether they be of an investment debt or equity nature.

(iii) apart from gathering information and the disclosure of that information, there is the imposition of certain restrictions on the activities by and with those whom I broadly call "insiders", that is, the 10-per-centers, the directors holding offices, as well as on corporate financial and investment practices.

Here I am referring to the extensive powers granted to the Governor in Council to issue regulations.

3. The third question is: Are such objectives to be accomplished by the specific terms of the bill or by regulations? Although the bill defines "investment companies" and the "business of investment," the definitions themselves are subject to clarification by regulations to be adopted pursuant to section 22 of the act, with no assurance that such regulations will be published at the time the bill comes into force and effect as a statute, or whether two years later, or perhaps some time in the intervening period. It would furthermore appear that such regulations, if as and when adopted, would have the same force and effect as if they were specifically incorporated in the bill.

For example, definitions of "business of investment" (2(1)(b)) and "investment company" (2(1)(f)), make reference to the use of some or all of the assets of a company or the use of 25 per cent thereof; but until a regulation is brought down to define the "valuation of assets", the definition has no meaning, and cannot be used as a criterion.

For example again, although Part I defines the persons to whom the bill applies and prescribes in section 8 the prohibitions, the Governor in Council may make regulations under section 22 which go far beyond the prohibitions contained in section 8. He may make such regulations as he considers appropriate to secure the establishment and maintenance of a sound financial structure for investment companies. This is a very broad power. He may make regulations pertaining to the levels of paid-up capital and surplus, the ratios of outstanding debt to paid-up capital and surplus, liquidation of assets—in other words, he can order any company coming under the ban to liquidate its assets—and the maximum permissible single investments—he has power by regulation to tell any one company whether it shall invest in another or say "you shall not invest in that particular company"—or loans of investment companies, and whether those transactions are dealt with through insiders or outsiders, and whether covered by section 8 or otherwise.

The Chairman: I wonder if you would comment on this. It strikes me that there is a provision in the Interpretation Act, that the use of the singular or the plural number imports the other.

Mr. MacKay: That is right.

The Chairman: I am wondering here, in relation to section 22 of the regulations, which speaks of "investment companies", might that not imply the authority to enact regulations relating to "an investing company?"

Mr. MacKay: This is what I am afraid of, Mr. Chairman. Again, I have read the comments of the Superintendent of Insurance and of Mr. Hockin—I have forgotten which—in which he said, when these

regulations have been brought down they will be brought down to cover a broad field. But in order to reach a regulation that is to cover a broad field you have to have one instance at least; so I think, following the chairman's remarks, that the orders in council, while they may be general in form, they can be applied to or directed specifically at "a" company.

This may be necessary, but at the present moment our companies are operating, and they are faced with the possibility, at any time, if this bill goes through as it is, of having a regulation brought down the next day saying "Mr. So and So, you cannot buy any more shares in that particular company in which you have invested." This may be an exaggeration, but I suggest it is a provision which it may be very difficult to operate under the bill.

4. The fourth question: Does the bill clearly state how these objectives are to be achieved?

(1) On the gathering of information, the objectives with regard to gathering information consist of the following:

(a) In the definition of those from whom information is to be gathered, that is to say, "investment companies", as defined, "carrying on business", as defined in the act.

The Chairman: Would you stop there? What would you say as to a provision, or at least a form of bill, which did not pretend to regulate the kind or nature of investment at all and simply dealt with authority in relation to the quality of the investment? In other words, there is no attempt to establish guidelines as to the categories or classes of investment in which you might put your money. That would be a freedom of choice; but the quality of the investment could be a matter of the supervision and control by the proper authority.

Mr. Turner: On that point, which we will get to further a little later on, what we are concerned about is this. We certainly do not mind being judged on what we invest in, but we question whether anybody in the civil service in Ottawa is necessarily in a position to tell us, giving us a better definition than we have ourselves, as to what is quality. We are very cognizant of this many times when many of our companies are making investments.

The Chairman: I used it in the broad sense, that you have exercised your judgment, you have made an investment; under the act there is authority to go in and assess the value.

Mr. Turner: We have no objection to anyone coming in and assessing this afterwards. What we do not want is to have someone coming along to tell us what we can or cannot do *a priori*.

The Chairman: That was not the purport of my question. You have freedom of choice but then you are subject to supervision afterwards.

Senator Connolly (Ottawa West): Could we follow up the chairman's question? It may be too late after the event, if they made a bad investment.

The Chairman: They say the smallest loss is the initial loss. You do not let it develop.

Senator Connolly (Ottawa West): That is the answer?

Mr. Turner: In our business, there are many examples where there is the sheer complexity of the decision, or the time involved in making the decision. If I may use one example which we did not make, but which had wide publicity, the case of the Labatt Company. Following the announcement that the family were going to sell the shares, the management appealed to some Canadian people to rally round to keep this company under Canadian control. We responded to a situation where in about thirty-six hours we got to the point of making or contracting a \$30 million bid for the stock that the family was contemplating selling. That involved making some extensive borrowing arrangements with a number of our chartered banks; it involved making decisions at 3 o'clock in the morning at a board meeting which had gone on from 9 o'clock the previous evening and which finally broke up about 10.30 the next morning, when the members went home to shave.

Senator Connolly (Ottawa West): You are worse than this committee.

Mr. Turner: Now, that kind of investment would simply be impossible. First of all, I would doubt that anyone else would have the wisdom to tell us we had or had not made a good decision in deciding to do that at that point of time. I doubt very much that any regulatory body could respond within the restrictions of time, even if they had the wisdom.

We are saying that the normal conduct of our business and the conduct of those people with whom we compete is such that we have to enter these things with a businessman's judgment, knowing that, if we are doing something that is discriminating against other shareholders or doing something improper, there is a body of legislation that deals with that kind of situation already.

Senator Connolly (Ottawa West): Namely, the Securities Act of the province.

Mr. Turner: The Securities Act of the province, yes. In some of these cases, senator, these companies get complex enough that they fall under the Securities Exchange Commission of the United States. It is very

likely that we are going to have national securities legislation here. We are fully cognizant of the fact that we have a problem here, because we do not have a national body of legislation. There are always means by which minority shareholders can bring suit against directors, if they believe the directors have acted improperly or have been using company funds or have been issuing shares not for real value. These are all things that I think really alert managers and directors know they have to exist under. There is a whole body of regulations now with which we entirely concur about the adequacy and fullness of disclosure of what you do. This should be done promptly and in a knowledgeable form so that outside people can form judgments on your activities. We are all in favour of that sort of thing.

Senator Connolly (Ottawa West): The corollary is that you probably admit you can make mistakes, but the regulatory and investigatory powers are not necessarily going to prevent those mistakes being made.

Mr. Turner: Exactly, sir.

The Chairman: My question was related to the suggestion that there would be no interference with your freedom of choice. Let us assume you had made the decision to bid for these Labatt shares and that you had succeeded in acquiring them. That would be a question of freedom of choice. Nobody had any authority to interfere with that. At some later date in the operations of your company, however, the relationship of those shares in your portfolio to a lot of other shares and your finance position might dictate that you should lighten the load somewhat. If you were not prepared to do that in the interests of the shareholders, the Superintendent might then make a direction.

Mr. Turner: We are quite prepared to have anybody come and tell us, after the fact, "Look, Power Corporation, you made a mistake doing this," or, "It is not in the interests of your shareholders". If that case can be sustained, obviously . . .

The Chairman: No, you are putting words in there that I did not use. I did not say that they would come afterwards and tell you you had made a mistake in making the investment. The director would speak in relation to the circumstances that were existing at some later date in relation to all the investments of the company, and even in relation to the status of this investment, and, if he formed a judgment on that, to the effect that there would be some peril were that situation to continue, then he might issue some kind of order. Would you object to that kind of supervision?

Mr. Turner: I think it depends upon how sophisticated it is. If he applies some standard set of ratios, I

am not sure that he can draft up legislation that will meet all the particular requirements. If he said to us, "Look, in view of the market performance of your securities, your ratio of debt to equity, you cannot cover your bonds," or something like that, then I would not have any objection to somebody telling us that. In fact, we would already have acted on it.

Senator Thorvaldson: In effect, you would really have a super board of directors. How would you like to operate a company under that situation?

Mr. Turner: I do not think it is proper in our kind of society.

Senator Thorvaldson: I am agreeing with you.

Mr. Turner: To have somebody come and tell us, on a judgment basis, "You know, it is our judgment that you people are erring in this fashion, and it is our judgment, the judgment of the management of the Power Corporation that you are not." If they can quantify it in some way, that is different.

Senator Connolly (Ottawa West): Let us carry it one step farther; let us admit, as we would, that Power Corporation manages its affairs properly.

Mr. Turner: But we do make mistakes. There is no question about that.

Senator Connolly (Ottawa West): By and large, however, you are a very reputable company. But what about the case of another outfit that is anything but reputable and which does some of the things that Senator Hayden has mentioned? In that case what would you have to say about regulations?

Mr. Turner: In my opinion—and this is only an opinion—I do not think the federal Government or anybody else can regulate against a deliberate fraud and prevent that sort of thing happening. The case mentioned earlier this morning of Atlantic Acceptance, was, in my opinion, a fraud. It was interpreted in the United States, by the corporate treasurers who had moneys invested in short-term securities in that company, as another example of poor Canadian management, and no corporate treasurer was going to risk for an eighth or a quarter of a point percentage keeping money in Canada. As a result of that fraud, \$600 million disappeared out of our short-term pool of moneys within approximately six weeks in Canada. This is the major thrust that caused the problems for the other finance companies. The banks or somebody else had to come and step in.

The United States, in all its wisdom, has not found a way of stopping a Mr. Di Angelos from deliberately telling people he has oil in a series of tanks, when, in fact, when the tanks are inspected it turns out that

there is no oil in them. For fraud of that nature you cannot write a set of rules entirely stopping it.

We have to address ourselves to incompetent management. That is something where proper inspection and disclosure may very well bring to light something that can be done better.

Senator Connolly (Ottawa West): But it will bring it to light only after the event.

Mr. Turner: In my opinion, nobody is going to show that fraud before it happens. I would have answered differently from the gentleman from I.A.C. I would say that, even if you had a super-plus law containing 15 more degrees of reporting, it might result in catching the fraud somewhat earlier, but, if the fraud is going to be there, it is going to be there.

Senator Thorvaldson: Just awhile ago you referred to the Securities Act of the province. What province were you referring to? Were you referring to Quebec or Ontario or others as well?

Mr. Turner: Well, in my judgment, senator, I think Ontario's act is probably the best among the provinces, and I think it causes the fullest disclosure. That act plus the rules and regulations of Toronto and Montreal stock exchange now force any publicly licensed company to make pretty adequate disclosures of what they are doing, and we have these 10 per cent rules and that sort of thing now. I am all in favour of that. I think the trend towards full disclosure is a very desirable public tool. In fact, we anticipated it. We have always been a couple of jumps ahead of these acts. We have told our own shareholders, for example, our own break-up value monthly since 1964. On the other hand, the Toronto stock exchange only got round to legislating quarterly estimates coming in at the beginning of 1967. We favour this idea of the public being fully informed of what goes on.

Senator Thorvaldson: The fact is, of course, that you are continually reporting to the Ontario Securities Commission and perhaps others as well.

Mr. Turner: Yes, those of British Columbia and Quebec.

The Chairman: I have a question I would like to direct to Mr. MacKay. It seems that the authority of the Superintendent under this bill, when he makes inspections, gets returns and calls for more information, is all with the object of deciding whether he should make a special report to his minister as to the ability of the company to repay all money borrowed by it on the securities of its bonds, debentures, and so on and so forth. His report has to say that there is inadequate security to do all that. When you come to the power by regulation, it seems to me that it goes much further than that—that, as in clause 22, to lay

down general guidelines, in connection with the establishment and maintenance of sound financial structure for investment companies, does not arise out of the primary purpose and responsibility of the Superintendent and the minister under this bill.

Mr. MacKay: That is right, Mr. Chairman.

The Chairman: And, therefore, maybe there is no place for section 22, in its terms, and there should just be the power to make regulations for the better administration of the act.

Mr. MacKay: That is perhaps one of the main purposes of our objection to the bill in its present form. It is that section 22 does not contain the usual, normal provisions of any bill or act providing for regulations, which is that the minister appointed to administer, or the Superintendent of Insurance, or whoever the official is, is given certain administrative rights by regulation.

As a matter of fact, I might suggest that you do not need anything except section 2 and section 22, and the rest of the act is unnecessary because under those two sections alone the Government could get everything it is asking for by the other section of the act.

The Chairman: Well, you would need a couple of other sections. You would need to decide who was going to be subject to the bill.

Mr. MacKay: Yes, that is section 2, as I say.

The Chairman: And you would need some sanctions and general authority to provide all kinds of guidelines.

Mr. MacKay: I was really taking up your remark, Mr. Chairman, on the powers of the Superintendent—they are limited to making recommendations, and that is all the Superintendent has—as to section 22 and all the other powers.

The Chairman: That is right. I do not think that he is entitled to them.

Mr. MacKay: Mr. Chairman, if I might revert to my prepared statement, and coming now to the question of restrictions, this is as to whether the bill accomplished these objectives. Section 8 provides for prohibition of what might be called “insider” transactions, retroactive from the date the bill is enacted as a statute to November 12, 1968. I do not want to dwell on that retroactive feature, but merely wish to point out that as from November 12, 1968, unless any changes in the bill should be enacted as a statute, say, next month, it means everything that has been done since November 12 comes within the ban of this bill, subjecting directors and officers to penalties and what-not. It is a frightening thought.

It is not known what effects, if any, the possibly restrictive regulations under section 22 would have in the fulfilment of the purposes of the bill. Three things are clear. The first thing is that the bill, in its present form, provides for legislation by regulation. I think that has been reiterated over and over again and does not need stressing. The second thing is that the bill vests in the discretion of the minister the determination of the persons to whom the bill is to apply, as in section 3 he has the right to give exemptions, which means he has the right to say that nobody is exempt. Certainly, any information sought to be obtained is not confidential, but may be made public, and I might revert to your remark on section 15, when the Superintendent comes to any given conclusion, after full examination of the detailed and confidential information of sales, costs of sales, and whatever is necessary, then he makes his recommendation to the minister who is then in a position of having to table the recommendation which, in effect, discloses to Parliament and the public the details of the business operation of any given company which have not been made available to the shareholders or creditors of the company, which normally should be done. As in the case of the Bureau of Statistics or any information returns, other than under the Canada Corporations Act, any information which the Superintendent obtains, either by questions or by inspection by his inspectors, we feel should be confidential and should not be made use of publicly.

What is not clear is the category of companies to which the bill is to apply. The definition is so broad that it extends far beyond what appear to be its express or even implied purposes. Any company that has indebtedness and that has investments is, until clarification, subject to the terms of the bill, whether or not such companies are investment companies as the term is normally used.

The inference can be drawn from the terms of Section 22 that, in due course, there will be a debt-capitalization ratio required in the determination of the scope of return “borrowings” and that there will be a realistic percentage of investments to “other assets”. Until the valuation of assets and the debt-capitalization ratio have been defined, it is almost impossible for any given company to determine with any accuracy what is the pertinent percentage of their assets to be used in investments, or what are to be the feasible limits of the debt which they will be allowed.

The fifth question is: Does the bill go further than is necessary to accomplish the objectives?

It is, we think, very clear that the bill goes far beyond what would appear to be the primary purposes of the government. We think it can clearly be inferred from the hearings to date that industrial holding companies, which carry on an integrated business indirectly through wholly-owned and controlled subsidiaries, were to be excluded. If so, it is, we would

suggest, not sufficient for this subjective intent of the government to be stated in the hearings. It should be specifically included by definition in the bill.

Likewise, it is suggested that the term "investment" should specifically exclude controlled operating subsidiaries. Such companies should not be in the position of having to ask for an exemption if it is the intention of the government that such companies should be exempt.

If the bill, in order to protect equity shareholders, is intended to govern or control or supervise investment companies, then the criteria of borrowings and investments become meaningless. If it is intended that current bank loans should be excluded from the term "borrowings", then the bill should clearly so state.

I might say that Mr. Emory pointed out that of the investment companies in the association, I think, only five had indebtedness—that is, of those subject to the act.

I think there will be briefs coming in—and there have been already—which show, for example, that the debt happened to be less than one-half of one per cent of the total equity. What is the difference between no debt and one-half of one per cent debt to equity? There must be some rationale in a definition that you cannot arbitrarily cut off at one dollar on bank loans. There must be some, whatever it may be, we do not state or even agree there should be this, but if this is what is intended, it should be in the act and not left to order in council or the discretion of the minister.

Finally, the sixth question: Is the bill likely to interfere unduly with normal acceptable business operations?

Generally speaking, we think it is clear that, so long as section 3, that is regarding the minister's power to exempt, section 8, the prohibition section, and section 22, the power to make regulations, remain in the bill, particularly if section 8 is to have the retroactive feature of having all transactions contemplated by that section prohibited as and from November 12, 1968, the bill creates, and since November 12, 1968, has created, uncertainty which will, as matters progress, become greater and greater unless some clarifications and limitations are put on its scope.

For example, any public company, or let us perhaps say the great majority of the public companies whose shares are listed on the stock exchanges, and who have complied, in their borrowings, in their reporting and in their business transactions, with the requirements of the Securities Acts of the various provinces, cannot, without danger of invocation of the severe penalties of Part III, enter into a normal stock purchase plan or stock option plan for employees, pursuant to the provisions of section 15 of the Canada Corporations Act, if such plans are, as they usually are, made available to officers, including, by definition, in the

bill the spectrum of officers, everything from president to assistant treasurer or assistant secretary, who, by no stretch of the imagination, could be called an "insider".

Inter-company transactions between parents and subsidiaries are likewise subject to attack, and the directors and officers subject to penalties, whether or not in the normal course an inter-company indebtedness is incurred.

I think possibly even amalgamations between parents and subsidiaries, or between sister companies, could be prohibited under the terms of this act.

The volume of the submissions and the variety of the submissions which have been made to the committee, and which, we are quite sure, will be made to the committee, clearly indicate the concern of the business community resulting from the lack of clarity and ambiguities of the bill itself, the power that is to be invested in the Governor in Council to issue regulations, and the arbitrary discretion of the minister in determining whether or not the bill applies to any given company, be it a finance company, real estate company, closed-end portfolio or management company, industrial holding company, or an operating industrial, commercial or servicing company.

In order to illustrate just exactly how serious confusion can arise by reason of the application of the provisions of section 8 alone to existing closed-end management investment companies, I present to you a chart of the corporate organization of Power Corporation of Canada, Limited. If you will look that chart you will see in the far left-hand corner the box for Trans-Canada Corporation Fund, which is 100 percent owned by Power Corporation.

Perhaps the most striking example of possible effects of the prohibitions of section 8 of the bill is the acquisition in May, 1968 by Power Corporation of all of the shares of Trans-Canada Corporation Fund. Had Bill S-17 been in force and effect at the time as a statute of Canada, the directors and officers of the two companies would, we suggest, have had grave and serious doubts as to whether the transaction above mentioned would have been entered into without first obtaining a specific exemption from the minister under section 3, for fear that the transaction would have been contrary to the provisions of section 8.

Another example can be given by a reference to the chart, and the investment in Consolidated-Bathurst Limited. This is on the left-hand side. There is the box for Shawinigan Industries Limited, and then you follow the line until you get to Consolidated-Bathurst Limited, 16.5 per cent. An offer was made in 1966 by Consolidated Paper Corporation Limited to acquire all the Class "A" common shares of Bathurst Paper Limited, including the shares held by Power Corporation of Canada, Limited which, at that time, owned more than ten per cent of the voting shares of

Bathurst—and of Consolidated. In other words, at that time Power Corporation owned more than 10 per cent of the stock of Consolidated Paper and Bathurst Paper.

Under the provisions of section 8 Consolidated would not have been authorized or permitted to buy the shares of Bathurst from the Power Corporation, even though there was an offer made to all the shareholders, including the Power Corporation. In view of the fact that Power Corporation had more than 10 per cent of the stock of Bathurst, Consolidated would have been prohibited from making the offer it did to all the shareholders of Bathurst, and obtaining all of the shares of Bathurst so it became a wholly owned subsidiary. Eventually Consolidated changed its name to Consolidated-Bathurst in order to indicate that the operations of the two companies were integrated.

In respect of Trans-Canada I have here a copy of the offer, which indicates exactly the extent of the disclosure and the extent of the information which was given to the shareholders of Trans-Canada as a result of which all of the shareholders, and not only the insiders accepted the offer. I have also the offer . . .

Senator Isnor: What is the date of that offer?

Mr. MacKay: That was made on May 31, 1968. I have also the formal offer by Consolidated Paper to Bathurst Paper.

The Chairman: I think, Mr. MacKay, since these transactions were carried out, we can assume that you complied with all the securities laws in the various provinces, and that there was full disclosure.

Mr. MacKay: That is right.

The Chairman: We do not need to read the prospectuses.

Mr. MacKay: Perhaps you are right, sir. The point I was making is that notwithstanding all of this we would still be faced, had the bill been in force in its present form, with the fact that we could not enter into this transaction without getting the consent of the minister. I might suggest that the minister under the act would have had a very difficult time in trying to decide whether or not he was going to grant an exemption for this sort of transaction. I would not have liked to have been in his position, as a matter of fact, had the proposition been put before me.

I have another example. You will see that one of the investments of Power Corporation is in Dominion Glass Limited. That is the third box from the left. Power Corporation owns 63.4 per cent of Dominion Glass. This again was an offer made to all of the shareholders of Dominion Glass by Power Corporation and by Consolidated-Bathurst to acquire a given

percentage of the shares of Dominion Glass. The offer was made in April, 1967, and as a result each acquired about 8 per cent of the stock. In due course, in 1968, Power Corporation acquired from Consolidated-Bathurst the shares that it had jointly acquired in Dominion Glass.

This again was a question of putting everything to all of the shareholders, who could either accept or reject the transaction. Nonetheless, had the bill been in force and effect at that time I suggest we could not have gone through with what is a normal transaction in the acquisition by a company such as Power Corporation of a substantial investment in a company which has growth potential and to which it proposed to give technical assistance.

The Chairman: It is preferable to say that you might not have been able to do it.

Mr. MacKay: Yes, Mr. Chairman. Although I am a lawyer by profession I am not by any means trying to give any interpretation, or to go into details of interpretation, other than to say in respect of the provision regarding beneficial ownership covers the whole spectrum of ambiguity.

Shawinigan Industries and Trans-Canada Corporation Fund—the two companies on the left hand side—are investment companies in the ordinary sense of the term, and they are both wholly-owned subsidiaries of Power Corporation of Canada. Power Corporation treats both of these wholly-owned subsidiaries and their operations as an integral part of their own, and switches or exchanges of securities between one or other of the subsidiaries and the parent have been made as appropriate occasions arose. Balances of payment very often arise in these transactions which would, if the bill had been in force and effect as an act at that time, be contrary to the provisions of such act.

Shawinigan might transfer some stock to Power Corporation and leave a balance of indebtedness, and Power Corporation might then transfer stock to Shawinigan Industries. But, this is all within the family. If you look at the chart you will see that the company has, apart from Dominion Glass, a large investment in Chemcell Limited, Northern and Central Gas Corporation Limited, North America Cinema Centres Limited, and Inspiration Limited:

If the terms of the bill were in force at the present time this would mean that if Power Corporation decided to increase its investment in any one of these large companies it would not be able to do so using the moneys of their wholly-owned subsidiaries, Trans-Canada Corporation Fund and Shawinigan Industries Limited. In other words, the bill as applied to the specific operations of Power Corporation within the framework of this bill means that almost any transaction that the Power Corporation proceeds with, such as a transaction to increase its investment in one of

these companies, or to lend money downstream in respect of inter-company indebtedness—all that is normal in the company's operations—the directors would be in the position that they could not do it without first asking an exemption for the company itself from the minister, or an exemption on each transaction as it comes up.

Mr. Turner has explained in the example of Labatt's how impossible it would be to make an acquisition such as that if you first had to go to the minister and say: "Please may I invest \$30 million in Labatt's so as to keep it in Canada?" If that were the case there would be no deal.

Mr. Chairman, there are other things that I was going to mention, but perhaps they have been covered. I do wish, however, to refer to the fact that the members of this committee, and also the superintendent of insurance, seem to take great interest in the Investment Companies Act of 1940 of the United States. I do not want to go into the question of whether or not industrial holding companies—that is, companies which operate through operating subsidiaries as distinct from investment companies of a portfolio nature—are specifically excluded. I think, Mr. Chairman having looked at the act, that if you want to get a definition of "investment company" you have to read about 93 pages, and look at the numerous examples of divisions and categories of companies. I might add that that act is applied in circumstances that are very different from those that exist in Canada. Conditions in the United States may very well want the powers that are being granted in their Investment Companies Act, but I suggest that such an act is not warranted in Canada.

For example, in the United States I believe that some states have cumulative voting; that is, if you have 10 per cent of the stock you can elect one or two directors to the board. They have a provision whereby a company can purchase its common equity stock. They have a provision whereby interest on indebtedness is deductible for tax purposes whether or not the debt was incurred for any particular reason. In other words, a company in the United States wants to buy back its common stock, it uses board money to do so and it not only gets back the common stock but is able to deduct the interest on money borrowed for that purpose.

I do not want to be categorical here because my knowledge of United States law is very superficial. However, the law and conditions in the United States are so totally different from those in Canada that I think it is very dangerous for our government in Canada to use any national statute and adopt, either in or out of context, portions of an act there and apply them in Canada without first determining exactly what the effect will be.

In any event, there was a remark made in a volume issued by Arthur Weisenberger and Company, investment dealers in New York I think, called *Investment*

Companies 1968 on the subject of the Investment Company Act, 1940. These comments were:

The Act (Investment Company Act of 1940) was adopted after the S.E.C. (Securities & Exchange Commission of the United States), at the direction of Congress, had made a thorough study of investment companies and their practices as they existed in the 1930s. Many responsible persons in the investment company business cooperated with the S.E.C. in the final drafting of the law and actively encouraged its adoption.

I think this in essence is what Power Corporation is trying to say.

Let me conclude very bluntly by summarizing our position. We agree that it may be desirable to regulate certain activities of certain companies for the benefit of the investing public as a whole.

We are strongly of the view that, in order to determine the nature and activities of the companies to be regulated and the form of legislation appropriate for that purpose, full information should first be gathered in order to ascertain what companies and what activities should be regulated and in what manner.

Finally, it is our view that the present bill should be amended to limit its effect to the accomplishment of the information-gathering process which, when completed, will permit the drafting of appropriate legislation without in the meantime disrupting normal and ordinary proper operations of the business community which we feel the bill in its present form would do.

We reiterate that we are most willing to co-operate with government officials in their search for all pertinent information in order to help them decide the specific terms of a bill appropriate to the circumstances. We reserve to ourselves only the request that if an amended bill is brought forward for third reading and it is in any respect changed from its present form we be permitted at that time to make any comments we feel would be appropriate and helpful.

The Chairman: Thank you, Mr. MacKay. We did some questioning while Mr. MacKay was presenting his brief?

Mr. MacKay: I am sorry, Mr. Chairman, did somebody ask a question? I did not hear it.

The Chairman: No, I interjected. If there are no further questions, shall we move on to the next submission?

Mr. Turner: Mr. Chairman, I should like to add a couple of points. It will not take very long.

The Chairman: Go ahead.

Senator Thorvaldson: Before Mr. Turner does that is it agreed that this submission will be printed into the record?

The Chairman: Yes.

Mr. Turner: Many of the things I had in mind were answered as the questions were asked, but I think there are two points worth mentioning. What we have really tried to address ourselves to is establishing a number of international companies based in Canada and run by Canadians. Our view is that strategy in the west is that international companies are growing, they will become bigger and bigger, and European experience tends to substantiate this. If we put together companies of this type, I suggest it is not yet entirely clear that the corporate form of such companies has been entirely delineated within the jurisdiction and structure of any one nation. That is to say, a number of people in this field are addressing themselves to a code of conduct for these kinds of companies. There have been all kinds of discussions, in this country and elsewhere, on whether that type of company ought to have national shareholders and what form the company should take. In discussing the Power Corporation there was active consideration of perhaps a closed-end type of company, but yet with the privilege of buying back its own shares. I personally feel it is premature for us to accept the structure of such a company, which will be competing in world conditions, would have even in its corporate form, with a law that tends to deal in broad brush fashion with investment companies. As Mr. MacKay has said, the 93-page document in the United States is a very sophisticated thing.

The second general point I would like to suggest is that when one makes these kinds of investment one of the problems is the real need to know the ground rules before putting your \$30 million into something. A bill may by regulation suddenly change the ground rules so that after a certain date the company is on notice that it may not be quite appropriate. When that broad brush treatment, in our view, seems to get into the very fabric of what we do, obviously we are concerned, and that is why we are here.

The Chairman: The next submission is from Canadian Pacific Investment Ltd. and Canadian Pacific Securities Ltd. We have here Mr. van den Berg and Mr. Levesque.

Mr. Donat J. Levesque, Assistant General Solicitor, Canadian Pacific Investment Ltd. and Canadian Pacific Securities Ltd: We wish to thank the committee for giving us this opportunity to present the views of these companies on Bill S-17. I understand that the joint brief submitted by the two companies has been circulated to all members of the committee.

The Chairman: Yes.

Mr. Levesque: The brief is short and, if it is agreeable to the committee, I would like Mr. van den Berg to read it so that it will form part of the record.

The Chairman: We can make it part of the record without his reading it. We have read it already. I wondered whether Mr. van den Berg wanted to make some supplementary comments on his brief.

Mr. Levesque: I am sure Mr. van den Berg will want to make some supplementary comments. I would again stress that the brief is short, if the committee would not mind hearing it read, otherwise I might take it upon myself to summarize what we have in the brief.

The Chairman: I guess the shortest way would be to have it read. The summary might take as long.

Mr. Levesque: Thank you, Mr. Chairman.

Mr. G. J. van den Berg, President, Canadian Pacific Securities Ltd. and Vice-President, Canadian Pacific Investment Ltd.: Mr. Chairman, and honourable senators, our brief reads:

C.P.I. was incorporated in 1962 under the Canada Corporations Act as a wholly-owned subsidiary of Canadian Pacific Railway Company to carry on the business of an investment and holding company. The more important subsidiaries of C.P.I. include Cominco Limited (53 per cent owned) and the following wholly-owned companies: Canadian Pacific Hotels Limited, Canadian Pacific Oil and Gas Limited, Pacific Logging Company Limited, Marathon Realty Company Limited and Canadian Pacific Securities Limited. A chart showing the relationship between the larger Canadian Pacific affiliates is attached as Appendix "A".

On November 1, 1967, C.P.I. sold publicly at par 5,000,000, \$20.00 par value, 4 3/4 per cent cumulative redeemable convertible voting preferred shares, Series A. As at December 31, 1968, C.P.R. owned 50,000,000 of the 50,015,582 outstanding common shares of C.P.I. Assuming full conversion of the preferred shares and exercise of all warrants Canadian Pacific Railway Company would own 77 per cent of C.P.I.'s common shares.

C.P.S.L., a wholly-owned subsidiary of C.P.I., was incorporated in 1965 under the Canada Corporations Act. It has been raising money to assist in the financing of capital projects and working capital requirements of affiliated companies. Moneys so raised have come mainly from Canadian money market dealers, banks, trust companies and large concerns. Some amounts have come from institutional investors in the U.S.A. All C.P.S.L. borrowings have been unconditionally guaranteed by C.P.I.

It is the submission of C.P.I. and C.P.S.L. that the bill goes further than is necessary to protect the lending public and that the bill will unnecessarily and adversely affect business generally and in particular the business of C.P.I. and C.P.S.L.

As it stands the bill could apply to any company regardless of its financial strength which has at least 25 per cent of its assets invested in the types of security or other properties described in section 2(1) (b) (ii) of the bill. Another company, regardless of its financial strength, with less than 25 per cent of its assets invested in such securities is not so affected. As a result a company which may have followed a prudent policy of retaining in liquid form for purposes of expansion in the future some of its retained income must comply with the Act whereas its competitor which has followed a different course and may not even be so strong financially is not affected by the act.

There will be companies which are not in the business of borrowing and loaning money which will be brought under the Act by reason of the 25 per cent rule in section 2(1) (f). While the minister is given power under section 3 to grant exemptions if he is satisfied that the business of investment carried on by a company is incidental to the principal business carried on by it, it is submitted that the scope of the act should be defined not by the minister but by Parliament.

For the purposes of the 25 per cent rule shares of corporations are included (2(1) (b) (ii) (B)). As a result efficient organizations which have established corporate profit centres could, by reason of share ownership of subsidiaries, be subject to the bill whereas competitors operating on a departmentalized basis could be exempt. It is suggested that where subsidiaries are involved such share holdings should be excluded from section 2(1) (b). In the case of C.P.I. this would exclude shares of such companies as Canadian Pacific Hotels Limited, Canadian Pacific Securities Limited, Cominco, Marathon Realty Company Limited.

From the viewpoint of the protection that the bill purports to extend to the lending public, it is not clear why the borrower of money on secured obligations should be brought under the act. So far as the lender is concerned, his rights are entrenched in a trust deed or similar document and his loan is presumably secured to his satisfaction. Yet if the borrower is affected by the 25 per cent rule such borrowing will bring that company under the act.

Section 8:

Under this section an investment company is precluded from making a loan to a corporation that is a substantial shareholder, i.e. a corporation that owns directly or indirectly more than 10 per

cent of the voting rights in the investment company. This prohibits upstream loans and would prevent C.P.S.L. from lending monies to C.P.I. and possibly Canadian Pacific Railway Company which through its interest in C.P.I. has more than 10 per cent voting strength in C.P.S.L. In addition, section 8 prohibits loans by an investment company to a corporation in which substantial shareholder of the investment company has a significant interest. A substantial shareholder has a significant interest in a corporation if it owns directly or indirectly more than 10 per cent of the capital stock of that corporation. As C.P.I. is a substantial shareholder of C.P.S.L. and also has a significant interest in companies such as Cominco, Canadian Pacific Hotels Limited, Pacific Logging Company Limited, Marathon Realty Company Limited (all of which companies have borrowed from C.P.S.L.) C.P.S.L. would be prevented under Bill S-17 from making lateral loans to its sister companies as indicated in the appendix herein. Furthermore if C.P.S.L. had subsidiary companies it could possibly be prevented from lending to such companies as C.P.I. would indirectly have a significant interest in those companies. Thus the bill as presently worded would not only prevent upstream and lateral loans but could also prohibit downstream loans. Accordingly in its present form section 8 would defeat the very purpose for which C.P.S.L. was incorporated, namely, to centralize borrowings and through efficient operation provide a reduction in borrowing costs.

It is submitted that loans to subsidiaries of the same parent should not be prohibited so long as the parent guarantees repayment of the borrowings of the investment company and that section 8(1) (c) (iii) be amended to read as follows:

“(iii) Any corporation that is a substantial shareholder of the company except where the borrowings of the company are guaranteed by such shareholder, or”

It is recognized that the Governor in Council should have powers to make regulations relating to the administration of the act. However it is submitted that decisions as to matters of substance should not be left to regulation but should be dealt with clearly in the act. Section 22 gives to the Governor in Council power to make regulations in relation to levels of paid-up capital and ratio of outstanding debt to paid-up capital and surplus, liquidity of assets and maximum permissible single investments or loans of investment companies and to prescribe rules relating to the valuation of assets and liabilities. It is submitted that these are all important matters of substance and companies affected by the act should be clearly told by the act itself where they stand in relation to these matters.

Right of Appeal:

The bill confers very broad power on the minister to vary or even cancel the right of an investment company to carry on business without any right of appeal being specifically granted to the investment company from a decision of the minister. It is submitted that there should be provision for an appeal to the courts against the minister's decisions.

Deregistration:

The bill further provides that once a company becomes a registered investment company, the certificate continues to be renewed without application. So long as the company is registered it continues to be considered as an investment company although it may not be actively engaged in the business of an investment company. It is submitted that provision should be made whereby a company could apply for deregistration.

Directors' Liability:

If an investment company borrows at a time when it does not hold a valid certificate of registry the directors of the company are jointly and severally liable to the creditors of the company as guarantors although they may never have been privy to the decision to borrow the monies. It is submitted that the liability should be limited to directors who consented to the borrowing.

Conclusion:

We have tried to show some of the difficulties which will flow from Bill S-17 as presently worded. It is hoped that the foregoing observations will bring forth a further examination of the objectives which inspired the introduction of this bill bearing in mind that protective legislation should not unnecessarily impede the development of business and the economy generally. Representatives of the parties to this submission are happy to appear before your committee and should your committee wish them to do so will attempt to answer questions arising out of this submission.

Senator Connolly (Ottawa West): Would there be any reason for either C.P. Investments or C.P. Securities Limited to look for deregistration in view of the character of those companies?

Mr. van den Berg: I do not think, Senator Connolly, it would necessarily apply to C.P.S.L. or C.P.I., but it could apply to other companies.

The Chairman: This is a general comment.

Senator Connolly (Ottawa West): I see. All right.

Senator Phillips (Rigaud): If the Superintendent of Insurance, realizing the importance of the C.P.R., were

to exempt C.P.S.L., would you then abandon your opposition to this bill?

Mr. van den Berg: No, I do not think so. I think it should be incorporated in the act.

Senator Thorvaldson: The superintendent might change his mind.

The Chairman: Any questions?

Senator Connolly (Ottawa West): I have a couple of questions here, Mr. Chairman. In regard to your suggestion about the amendment to section 8(1)(c)(iii), adding the words "except when the borrowings of the company are guaranteed by such shareholders," I take it that what you are getting at is this. If there is such a guarantee, you are proposing that not only upstream loans—which would apply to, say, the railway company itself—or downstream loans—which might apply to one like Canadian Pacific Securities Limited and the one, two, three, four or five subsidiaries below . . .

Mr. van den Berg: Those are laterals.

Senator Connolly (Ottawa West): Those are laterals. In any event, both laterals and downstream loans would be adequately protected by the guarantee that is provided in the manner suggested?

Mr. van den Berg: I think that the rationale for this bill or for these provisions is gone as soon as the shareholder has a dominant interest in the company, provided he has a fully iron-clad guarantee.

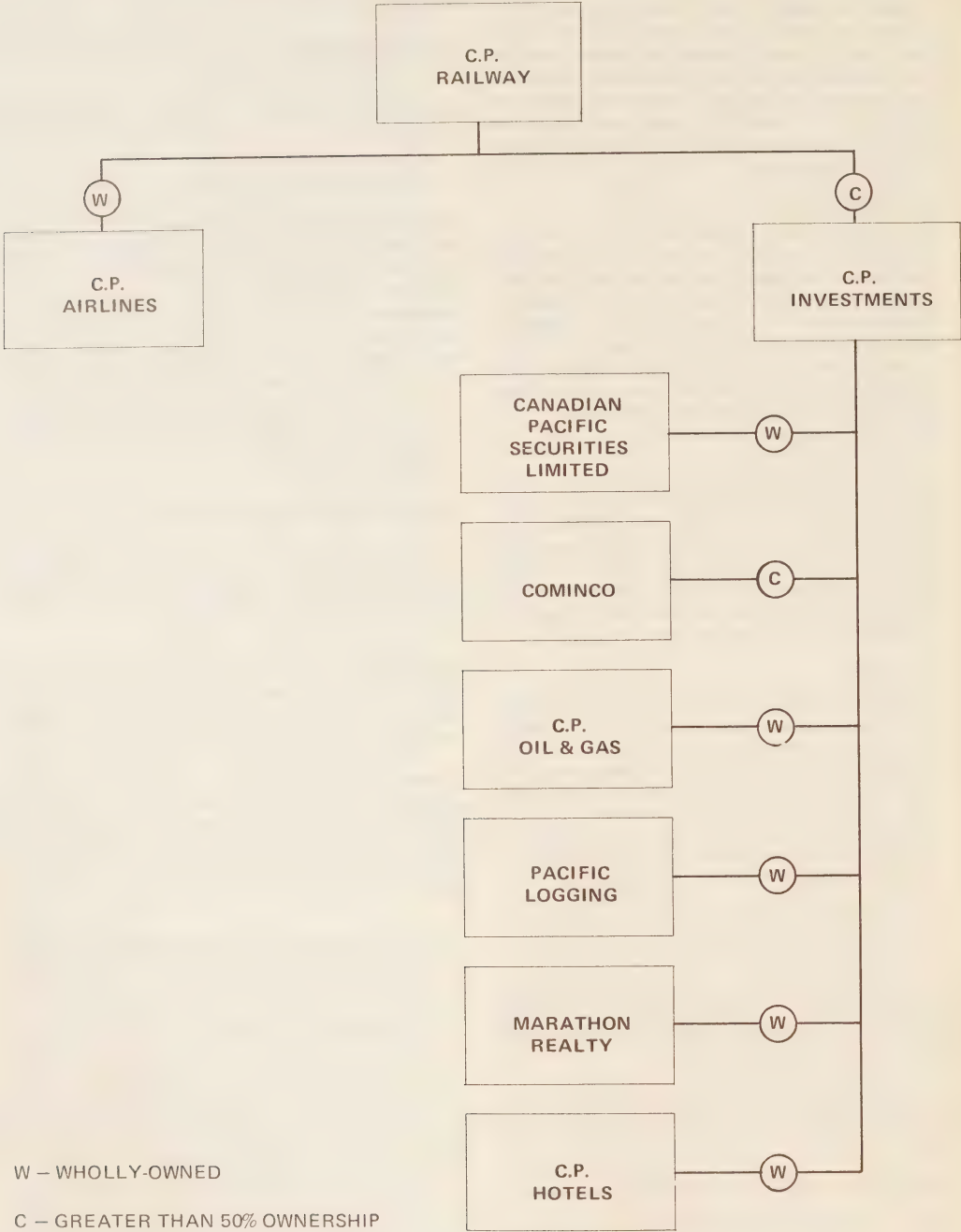
Senator Connolly (Ottawa West): Would it not be simplifying it to say that if those words were added to subparagraph (iii) that the problems envisaged by this brief, in respect of both Canadian Pacific Investment and Canadian Pacific Securities Limited, would be eliminated?

Mr. van den Berg: Our main problem of being in breach of the law since November 12, if my memory serves me aright, would be solved, yes.

Senator Connolly (Ottawa West): It is as simple as that.

Mr. Peck: On clause 8, I think that if we had an exception which we were requesting it would still permit Canadian Pacific Securities to continue to act with companies which are laterally placed with Canadian Pacific Securities, whereas under the present one Canadian Pacific Securities could not possibly lend any money to Marathon Realty Limited by reason of the prohibition which is made. I think we would have to assume that Canadian Pacific Securities Limited comes within the definition. Our main bone

(Appendix to C.P. Securities and C.P. Investment Ltd.'s brief)



of contention is that the definition section is much too broad.

The Chairman: We can clear that by an exception.

Mr. Peck: By an exception or by proper definition.

Senator Connolly (Ottawa West): Mr. Chairman, I do not like to refer to my own speech on this.

The Chairman: Why not? Everybody has read it.

Senator Connolly (Ottawa West): The kind of situation that I envisaged, when I spoke on the bill, indicated that in the rather sophisticated financial world today, specialist vehicles like this are useful. I suppose it would be possible to have the Marathon Realty Company go out on its own and borrow money and do the investment, but for the others such as Cominco, Canadian Pacific Hotels, Oil, Gas and others, from the point of view of expedient and efficient operation, it is better to have what I call a security company do this work for these various subsidiaries of Canadian Pacific.

Mr. van den Berg: It is the financing arm of Canadian Pacific Investment, which could just as well have been a section or department of C.P. itself.

Senator Connolly (Ottawa West): If it were a department, you would not need the act.

Mr. van den Berg: That is right, apart from the downstream part.

Senator Connolly (Ottawa West): But again the individual companies themselves would have assets that would enable them to go to the market and get all the financing they need.

Mr. van den Berg: They could, at a higher price.

Senator Connolly (Ottawa West): This is the least efficient operation?

Mr. van den Berg: Yes.

The Chairman: This is the fact, that this is the situation, and this is the method these people have selected for providing the money they need in their operations; and we have to look at it in that light and not in the light of what we could or may do. We have to see whether, in these circumstances, there should be an exception. That may be a simpler way of dealing with it, if we decide it should be dealt with, than by altering the definition, to exclude this.

We have not made up our minds. We need not write the definition immediately. We cannot settle it now, as to whether we are going to deal with that C.P. situation and exempt them, or whether we are going

to make this an exception, or whether we are going to change the definition. But, from the tenor of the discussion that has gone on here, one might reasonably draw a conclusion that we have ideas on the matter of proper definition and also in relation to the scope and effect of prohibited transactions, and certainly in relation to section 22, on the regulations.

It is too early to make any public commitments, until we settle our own minds on it; but this would appear to be a case that is worthy of very careful consideration.

Senator Connolly (Ottawa West): I think, too, Mr. Chairman, that perhaps the committee should hark back to some of the things that the Governor of the Bank of Canada has been saying, that flexibility in the financial markets and in the structure of the companies which are engaged in financing, is essential to the more efficient conduct of business. I take it that the witness in this case has been indicating that there is here a special way of doing something and what he is suggesting is that it should be properly guaranteed, then it is an efficient thing and it is a good thing.

The Chairman: I think we have got that, senator. Are there any other questions or, have you anything further to add?

Mr. van den Berg: No, Mr. Chairman.

The Chairman: Thank you very much.

Honourable senators, the next witnesses before us this morning are representatives of Massey-Ferguson Limited. We have here Mr. John G. Staiger, the General Vice-President and Mr. R. M. Snelgrove, Senior Solicitor. Mr. Staiger, we have had your brief with us for some time and have read it. Do you wish to read it or make a statement?

Mr. John G. Staiger, General Vice-President, Massey-Ferguson Limited: Honourable senators, your chairman assures me that you have done your homework and have read our brief. Therefore I will not in any way attempt to read it to you; that would be most presumptuous.

We did tell you in the brief what kind of company we are. We are an international industrial holding company. I do not believe we intended to be that when we started many years ago. Our company is now 122 years old, going back to Mr. Massey and Mr. Harris. We have gone into this because this is the best way to use Canadian management and Canadian know-how in competition with the largest farm machinery manufacturers in the world, and we compete against the top three. Of this we in Canada I believe are both proud.

We believe sincerely that it is not the intention of this legislation to include an international industrial

holding company of our nature and our type of business within the network or the mesh of this kind of regulation, inquiry, etc.

We are very very public. We live practically in a goldfish bowl, which is the only way you can live if you are going to borrow money in the money markets of the world, in which we have to borrow money, or if you are going to go before the numerous security publics that we must go through to get equity capital. We abide by all the rules of the SCC. We are registered in the United States. We are registered in the stock exchanges in London, England, New York and from New York into the other exchanges across the United States. We are registered on the big board in New York and we are registered in Toronto and Montreal.

For these reasons alone, the disclosures we must make, including my own personal salary every year, go away beyond what the Insurance Commissioner could possibly achieve, and we are therefore always subject to the inquiries of not only our shareholders and those who lend money to us, but also security analysts, people who are simply selling our stock along with other stocks, people who include our stocks or investment companies who include our stocks in their total investment portfolio, et cetera.

I feel further, sir, that our new annual report which is now being distributed to the honourable senators who are members of the committee, further enhances this statement of full disclosure. Full availability of facts for lenders protects them for investors in equities and investors in shares.

For this reason, Mr. Chairman, honourable senators, we simply appear here not to really read our brief, but to supplement it with a personal appearance to answer any questions that you may care to direct to me or to my two associates, one of whom, Mr. Snelgrove, is chief counsel and solicitor, and the other one of whom is assistant secretary, Mr. William Munso.

The Chairman: Looking at your consolidated balance sheet as of October 31, 1967, there is an item under "investments" noted as "wholly-owned finance companies, at equity in net assets"; following that is, "associated companies, at cost".

Is it a fair conclusion to draw from that that the sum total of investments that your holding company has would be investments in subsidiary and associated companies?

Mr. Staiger: That is true.

The Chairman: And that you would not have outside investments or what we commonly call a portfolio of investments in outside and unrelated companies?

Mr. Staiger: No, sir. The maximum investment we might have would be short-term investments in Govern-

ment tax certificates which would probably derive the highest income until taxes became due. This is about the only investment we are in.

The Chairman: Looking at your statement of the various countries in which you operate, it would appear that what might otherwise be called your branch operations are in corporate form, because that is a more economic way or more feasible way of carrying on these operations.

Mr. Staiger: In many countries of the world, unless you operate as an independent subsidiary, wholly-owned perhaps, but nevertheless independent, it is impossible first of all to borrow money locally. A branch has to get its money put in. Therefore, it would require Canadian dollars going into Germany, for example, which I would consider at this point in time to be a great economic and financial fallacy—to finance this coming year's German production of combines and harvesters and machines of that kind during the period when we must finance before we make retail sale, for example.

We borrow this kind of money locally on the German market because we are a German company in Germany. We are, in fact, rather a management and international or multi-national management company that is an umbrella over all of these various subsidiaries in the 18 countries in which we operate, sir.

The Chairman: So you have what I might call corporate industrial tools of your management holding company. They are arms.

Mr. Staiger: Yes, sir.

The Chairman: But the combination is an industrial operation. The combination of the holding company and these tools, that is. You just elect for various reasons to do it in this form. If I were describing the holding company, it is really the management and carrying on of industrial operations in various countries through subsidiary corporate entities.

Mr. Staiger: Yes. The principal and practically only objective is the manufacture and sale of farm machinery and smaller groups of other products. Whatever is needed to support that manufacture and sale is what we otherwise engage in. Our captive finance companies are there solely because that is a pattern of industry. It is the only economical way to support the retail sales of our products.

The Chairman: This is really clear-cut and quite easy to follow.

Senator Connolly (Ottawa West): This has nothing to do with this bill, really, but may I ask the question, Mr. Chairman? I notice under the heading of "South Africa, Rhodesia and Malawi", that you have a

company in Malawi. In the Commonwealth Parliamentary Association we have been anxious to promote the development of the agricultural industry in these under-developed countries within the Commonwealth. In the equatorial area, is Malawi the only country where you think the agricultural development is sufficiently advanced to establish yourself?

Mr. Staiger: Oh, no. It is a matter of the economics of the situation. Malawi happens to be a country from which we can export to most of the other African countries. It is a way of getting certain products that have to be exported to all the South African countries out of South Africa itself.

Senator Connolly (Ottawa West): And out of Rhodesia.

Mr. Staiger: Which are excluded from these areas as sources of supply. In other words, we just take products that are being banned and are being considered as contraband because they are made in South Africa and put them in Malawi, which we are perfectly free to do. Incidentally, this is the largest single production item we have. We make ten to twelve million of them. They are hoes. The hoe is a very primitive one, about this wide (indicating a width of approximately a foot and a half), and weighing several pounds and having an eye at the top. This is the principal item we make in Malawi. We also make plows and plowshares—items of a rather primitive type for the more elemental agricultural situations in that area. We are, however, engaged in negotiations through the FAO, which is the Food and Agricultural Organization of the United Nations, in opening a school for farmers and for mechanics in Kenya. As soon as this becomes viable we shall also be opening additional assembly and manufacturing plants.

Senator Connolly (Ottawa West): So you look for a more sophisticated development in the field of agriculture in these under-developed countries?

Mr. Staiger: Yes, sir. The fact, of course, is that until you get a local industry that can support the production of tractors and can support the production of more sophisticated agricultural equipment, it is far cheaper for the under-developed country to get the necessary farm exchange and buy and import rather than try to make.

Senator Connolly (Ottawa West): Are you known as a Canadian organization?

Mr. Staiger: Yes, sir.

The Chairman: Are there any other questions? Thank you very much, Mr. Staiger.

Mr. Staiger: Thank you, sir.

The Chairman: May we have an order to print in the appendix the brief which Massey-Ferguson has filed.

Hon. Senators: Agreed.

(For text of brief, see Appendix "D")

The Chairman: We also have a brief from the Canadian Chamber of Commerce, in the form of a letter. The Canadian Chamber of Commerce does not propose to appear and make any representations. What they are submitting is contained in their brief, so I think we should print it as an appendix to these proceedings.

(For text of brief, see Appendix "E")

The Chairman: This concludes the submissions available for today.

Senator Connolly (Ottawa West): Could I ask you, Mr. Chairman, whether you have received—because I have, and perhaps other members of the committee have—a letter from Osler, Hoskin and Harcourt? I have read it, but as it only came yesterday I have not read it with all the care I would have liked. I take it it is not going to be the subject matter of a submission here.

The Chairman: No, and before I discuss it with the committee—and I think I might do that next time—I want to digest it myself.

Senator Connolly (Ottawa West): That would be helpful to us.

The Chairman: We have further submissions, at least two so far, that we know of, for next week. These people will be appearing next Wednesday, March 5, and that may conclude the submissions.

After that, of course, we will then get down to the business of dealing with Mr. Humphrys and see what his answers are. Then, of course, later we have to have our own meetings to settle on what we are going to do with the bill. So, we will reconvene next Wednesday at which time we will have other work to deal with as well.

The committee adjourned.

APPENDIX "A"

THE STANDING SENATE COMMITTEE
ON BANKING, TRADE AND COMMERCE

BRIEF

SUBMITTED BY

INDUSTRIAL ACCEPTANCE CORPORATION LIMITED

IN RESPECT OF

BILL S - 17

AN ACT RESPECTING INVESTMENT COMPANIES

The Company

Industrial Acceptance Corporation Limited commenced business in Canada in 1923 as a branch office of a U.S. company. The branch was converted into a federally incorporated company on February 7th 1925 and was then a wholly-owned subsidiary of the U.S. parent. In June of 1930, Canadian investors purchased this subsidiary and it became wholly Canadian owned and managed. Later, the stock was listed on the Montreal, Toronto and Vancouver exchanges and although some shares have been purchased from time to time on the open market by other than Canadian investors, the latest count (Dec. 9, 1968) showed that out of 14,108 common shareholders, over 95% were Canadian residents and they owned 94% of the number of common shares outstanding. No one shareholder or group of shareholders beneficially owns a controlling interest or is specially represented in that sense on the Board or on the Board of any subsidiary. With the exception of one person, the entire board of directors and all of the senior management are Canadian citizens, residing in Canada.

The corporation as a whole now employs over 3600 people in Canada and has 575 outlets for its various services throughout the 10 provinces and Yukon Territory.

For the further information of the Committee one copy of each of the following IAC reports has been filed with its Secretary as appendices. More copies will be provided if needed.

- Appendix I - Annual Report - December 31st, 1967
- Appendix II - Supplement to the Annual Report - December 31st, 1967
- Appendix III - CANSAP (Canadian Sales Finance Long Form Report) -
December 31st, 1967
- Appendix IV - Robert Morris Questionnaires - December 31st, 1967

Introduction

I.A.C. is a member of the Federated Council of Sales Finance Companies which represents a large segment of the sales finance business in Canada while Niagara Finance Company Limited, our consumer loan subsidiary is a member of the Canadian Consumer Loan Association.

We expect that one or both of these associations will be submitting a brief to your Committee. Our decision to proceed individually, however, should not be interpreted as meaning a disassociation from a brief from either association. It should rather be viewed as an attempt to present an individual point of view which we felt would be useful to this Committee. Also we felt it would be useful to the Committee to have specific data such as contained in the appendices to this brief, and which would not be available on an industry-wide basis.

"Investment Companies"

It is recognized that Bill S-17 is the result of investor losses in recent years relating to Canadian companies such as Atlantic Acceptance and Prudential Finance. Both of these companies and all others where trouble has developed, were of provincial origin so it must be pointed out that no legislation which is applicable solely to federal companies can provide suitable remedies unless provincial authorities enact comparable legislation — or steps are taken which would permit and induce provincial companies to come under federal legislation.

In any event the law should provide a clear distinction for investors between those companies which do come under the legislation and which would therefore be more secure from an investment point of view, and those which do not.

The designation "investment companies" seems to us to be somewhat less than satisfactory and may cause some confusion. The word "investment" has long been associated with security underwriters and dealers, stock brokers, mutual funds, holding companies etc. In the Report of the Royal Commission on Banking and Finance, Chapter 13 deals with "Insurance, Invest-

ment Companies, Pension Funds." Investment companies (page 251) are described as "intermediaries selling securities to the public and investing the proceeds in diversified investment portfolios." There follows then in this section a description of the operation of Mutual Funds, both open and closed-end.

The definition of "business of investment" found in section 2 (1) (b) of the Bill and the definition of "investment" found in section 2 (1) (f) of the Bill would seem to us to be much too broad to be meaningful.

For example, without attempting to enumerate the various corporations that would be included under the Bill as presently drafted, it would include such large and diverse federal companies as Canadian Pacific Investments Limited, Power Corporation and our own company (Industrial Acceptance Corporation Limited.)

It may well be that legislation is required for all of these types of companies, however the nature of the business of each is substantially different.

I.A.C.'s business is primarily the financing of instalment obligations, leasing and the making of direct loans. Our receivables are divided into approximately equal proportions between consumer and business transactions with the business portion growing at a faster rate than the consumer portion in recent years.

In contrast, for example, Power Corporation may be described as a holding and management company with controlling or substantial interest in public utility, oil and gas pipeline, finance, chemical, pulp and paper, transportation, mining, real estate and other industries.

It would appear to us that the great variety of corporations that would be included with the definitions as they presently read in Bill S-17 cannot all remain subject to similar legislation.

"Near Banks"

The Porter Royal Commission on Banking and Finance in its report dealt extensively with what it referred to as "near banks" which would include companies such as I.A.C. Chapter 18, "An Approach to Banking Legislation" and Chapter 19, "Regulation of Banking Institutions" make many recommendations which we feel merit the attention of this Committee.

The main points, insofar as I.A.C. and similar companies are concerned, may be summarized as follows: (All quotations are from the Report of the Royal Commission on Banking and Finance.)

1. Federal Banking legislation should be extended to cover all financial institutions issuing banking type liabilities. There could however be certain exemptions as outlined in the Porter report.

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"Thus in our view the federal banking legislation must cover all private financial institutions issuing banking liabilities — we would include among the banking liabilities all term deposits, whatever their formal name, and other claims on institutions maturing, or redeemable at a fixed price, within 100 days of the time of original issue or of the time at which notice of withdrawal is given by the customer."

....."The banking legislation should also exempt institutions which do borrow from a broad public but whose only short-term liabilities are in the form of marketable paper not redeemable on demand or short notice and which sell these liabilities through independent dealers or other agencies subject to the prospectus and other requirements of the securities acts."

The exemptions of institutions who sell marketable paper through independent dealers does not seem to be merited, although our sale of short-term notes is handled in that way.

2. Financial institutions coming under banking legislation should be permitted to use the word "bank" in their names. However, those which are not chartered banks or savings banks should be required to qualify the word bank in their names by the use of other words indicating their type of business. We have considered various names that might be suitable for companies like ours, such as merchant banks and industrial banks, and would suggest the designation industrial banks or industrial banking companies as being the most appropriate. Firms classified as industrial banks in the U.S.A. are similar in many respects to sales finance companies in Canada. (We might also point out that the counterpart of the Federated Council of Sales Finance Companies in the U.S.A. is called the American Industrial Bankers Association. This association being an amalgamation of the former American Finance Conference and the former AIBA).

It may be that a more appropriate name can be determined but for the purposes of this brief we will use the term "industrial banks".

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"In order to avoid creating the false impression that the new legislation had suddenly removed all differences in the particular types of banking business done by the different institutions, we recommend that only the present chartered banks and others incorporated in the same way by Act of Parliament should be entitled to use the name 'bank' without qualification. The two savings banks could continue to use the term 'savings bank' if they wished, while other institutions licensed under the banking legislation — some of which would be federal corporations and some provincial — should be required to qualify the word bank in their names by the use of other words indicating the character or background of their business."

3. Responsibility for supervision and inspection for all banking institutions should rest with the Inspector General of Banks.

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"The essential feature of banking regulation must be good and thorough supervision and inspection such as that which now takes place within the framework of the Bank Act and contributes so much to the soundness of our chartered and savings banks..."

It is also essential to make this supervision as flexible and free of rigid rules and regulations as possible in order to avoid inducing an unnecessarily conservative approach by our financial institutions to the conduct of their business."

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...."we recommend that the federal authority have power to require regular returns from the institutions under its jurisdiction (as is now the case for the chartered banks and Quebec Savings Banks) and to require that all such institutions maintain adequate internal inspection procedures and be subject to regular outside audit. The auditors should be chosen from a panel of highly qualified auditors approved by the authorities (as in the present Bank and Savings Bank Acts)" etc.....

"The staff of the Inspector General of Banks would have to be enlarged to undertake these new responsibilities. The cost of supervision should continue to be assessed on the institutions in proportion to their size, or perhaps on the basis of some more equitable measure of the expenses incurred by the supervisor's office."

4. There should be a provision that banking institutions have an adequate capital investment, probably equivalent to that now required under the Bank Act.

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... "the legislation regulating financial institutions should not establish statutory ratios of capital to assets. It should set a relatively low statutory minimum for starting up a banking institution so as not to discourage the entry of smaller specialized companies, but at the same time it should give the Inspector General power — subject to appeal to the Treasury Board — to set such high requirements as may be necessary to ensure the soundness of enterprises with more ambitious plans, and in particular to absorb the likely expenses of establishment and early operations. This, we understand, is the actual position under the Bank Act at the moment. The present Bank Act requirement that a new bank have paid up capital of at least \$500,000 as a minimum legal requirement seems appropriate. Other qualifications for a charter or incorporation should be kept to a minimum, although we feel the Act should require that applicants be of sound reputation and proven business experience."

5. We support the recommendation of the Porter Commission that all loans or investments in excess of 5% of capital and reserves should be reported to the Inspector General and also the Commission's recommendations in relation to credits to directors or enterprises with which they are associated.

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"One way in which the capital soundness of an institution can be seriously compromised is by the making of excessively large individual loans or investments. We therefore recommend that all loans or investments in excess of 5% of capital and reserves should be reported to the Inspector General. The banks should not advance or commit in any form more than a reasonable amount in relation to capital and reserves to a single borrower. The Inspector General should continue to see that prudent lending practices are followed. The present provision of the Bank Act which precludes individual directors from participating in decisions about credits to them or to enterprises with which they are associated should be retained, as should the requirement that such credits in excess of 5% of the bank's capital be approved by two thirds of the other directors present. In addition, copies of the relevant statements regarding directors' interests and details of the individual loans or other credits should be forwarded to the Inspector General; similar disclosure arrangements might be made with respect to the total of salaries and bonuses paid to officers and directors.

The Inspector General would then be put in a position to notice any undesirable trends and should be given the power to require each institution to publish the amounts involved in its annual return to shareholders or more frequently if deemed necessary. In addition, he would of course have the overriding power to require any institution to desist from making any loans to directors or others if these seemed likely to imperil the soundness of the institution concerned."

6. Liquid asset requirements are dealt with in the Porter Commission Report pages 394 - 396. In brief the Report does not recommend that statutory liquidity ratios should be imposed for the purposes of public protection but goes on to say:

"We would expect the institutions concerned to support wise supervision in a matter which bears so directly on their own best interest. Indeed, they might well co-operate with the Inspector General of Banks in working out appropriate guide-lines: some institutions have already taken such steps privately within their own associations. We find it difficult to offer any specific advice as to these guidelines or as to the classes of assets which would be included. However, the chartered banks have operated soundly with between 20% and 25% of their assets invested in cash, day and call loans and short-dated federal government obligations. These assets are held against liabilities which are virtually all chequable, a fact which suggests that somewhat similar ratios would be appropriate against demand and chequable liabilities — with somewhat higher ratios being held against current accounts and perhaps somewhat lower ones applying to liabilities redeemable at short notice. The experience of institutions dealing more in genuine term deposits suggest that liquidity ratios against such liabilities might vary from as little as 10% to 20%, depending on the various factors affecting their liability and asset structure mentioned earlier. Nevertheless, the supervisory authorities and institutions are in a better position than we to work out appropriate and more precise guide-lines."

Our view of an appropriate guide-line in respect of short-term obligations would be a liquidity reserve of $12\frac{1}{2}\%$ of such short-term paper. Such reserve should not include cash but should be invested to a minimum of 50% in readily marketable investments such as:

Short Canadas (3 years or less)

Treasury Bills

Day Loans

Bankers Acceptances

Negotiable Notes of the Chartered Banks (bearer discount notes)

with the remainder invested in the short-term paper issued by major corporations of undoubted repute.

7. We suggest that consideration might be given to the provision of lines-of-last-resort for financial intermediaries qualifying under this Act, particularly where the commercial paper market is used. Such lines should be provided by the Bank of Canada or some other government agency.

Most segments of the short-term money market do have such facilities available. The chartered banks and money market dealers for example have lines of credit with the Bank of Canada.

Properly managed "industrial banks" now voluntarily maintain open lines of credit with Canadian chartered banks and United States banks. But it seems unsound in principle for a class of financial intermediaries to depend upon their largest competitors - the chartered banks - for such facilities. It is also undesirable to have to rely too heavily upon foreign banks in this regard.

While the present lines of credit would have to be substantially maintained the mere existence of governmental credit lines-of-last-resort would reduce the volatility of short-term money and actually render the probability of calls on such lines unlikely.

Line-of-last-resort facilities, and such inspection and regulation as might be appropriate, would create an atmosphere of greater confidence in the minds of investors (especially foreign investors) and thus protect the "industrial banks" against possible abrupt fluctuations in liquidity over which they might have no control.

Definition

As we stated earlier it would appear to us that the great variety of corporations that would be included within the definitions as they presently read in Bill S-17 cannot all remain subject to similar legislation.

Therefore, in line with our support of the Porter Commission recommendations to extend banking legislation to near banks (industrial banks or finance companies) such institutions will have to be defined to differentiate them from "investment companies."

An appropriate definition would be the one found in Regulation 101 - 67 of the Ontario Securities Commission and which was quoted by Senator Connolly in the Debates of January 22nd.

Following this format an industrial bank would be:

A company its subsidiaries or affiliates for which a material activity involves,

- a) purchasing, discounting or otherwise acquiring promissory notes, acceptances, accounts receivable, bills of sale, chattel mortgages, conditional sales contracts, drafts, and other obligations representing part or all of the sales price of merchandise, and services,
- b) factoring, or purchasing and leasing personal property as part of a hire purchase or similar business; or
- c) making secured and unsecured loans.

Regulation

Having defined the type of business to which the legislation should apply we should now consider what type of regulation is necessary and would be effective.

a) Reporting and Inspection

The provisions of Part I of Bill S-17 concerning the filing of financial statements periodically or on demand are copies of like provision found in part of the provincial Securities Acts. As the legislation would only apply to companies which borrow money for the purpose of their businesses all of them become subject to the Securities Acts relating to the issuance of debt securities. Taking as an example the Ontario Securities Act, 1966 we see in Sections 119 - 130 of that Act provisions concerning the filing of financial statements which are much more extensive than the provision contained in Part I of Bill S-17.

Effectively then this section of Bill S-17 simply adds to the paper work required of corporations without any remedial results.

The Act as now drafted also provides for inspection powers, but in view of the enormous number of individual receivables comprising the assets of even medium-sized companies, it is suggested that something like the following procedure be adapted from the Bank Act. Companies could be required to report quarterly to their directors with a certified copy of such a report to the Minister, listing each account on the company's books where the total owing by any one person or company equals or exceeds 5% of the company's net worth. There could also be included in such a report, a list of non-current accounts, the individual amounts of which equal or exceed 1% of net worth. For this purpose, non-current accounts could be defined to mean those with arrears of principal or interest or both of 90 days or more as well as accounts less than 90 days in arrears where any action has been taken to realize on security, repossess, or where for any reason the account is deemed unsound by the management. If inspections were aimed at verifying by tests, the accuracy of such returns, then spot checks of other material plus balance sheets, supplements, and certificates of auditors satisfactory to the Minister, should provide an adequate view of a company's affairs without incurring excessive costs.

b) Registration

The provisions of Part II of Bill S-17 concerning Certificates of Registry are of great concern to us.

First of all we consider that a maximum term of one year for registry could be disturbing to prospective investors. We wonder if something more like the provisions of the Bank Act where 10 years is provided would not be more appropriate.

Section 10, sub-section 2, paragraph (b) is disturbing because it appears to give the Minister power to run the company with the implication that there could be conflict with the Canada Corporations Act and that such powers of the Minister could supersede the powers and duties of directors, officers and shareholders. One wonders how this would affect the position of creditors relying upon trust deeds and whether such powers could result in alteration of a company's by-laws. We think the Minister should be required to consult with auditors and trustees and that there should be provision for appeal to protect against arbitrary ministerial decisions.

With respect to Section 14, sub-section 1, the question arises as to the standards which might be used in determining if there is an inadequately secured position. Presumably, if nothing untoward is revealed by returns, statements or inspections, if the terms of trust deeds or other borrowing arrangements are being complied with by the company and if creditors are not complaining, it should be assumed that security is adequate.

Having regard to the necessity to control expenses, we question the value of the paper work implicit in Section 20. Most financial intermediaries are now publishing comprehensive annual reports and supplements, prospectuses are increasingly detailed and we would suggest that companies could be requested to supply such additional information or explanations as might reasonably be required but that otherwise, published data now available should be sufficient.

We particularly question in principle, the soundness of the provisions of sub-paragraph 2 of Section 20. In our view, no official should have powers to alter financial statements which have been concurred in by reputable auditors, boards of directors and managements whose integrity is not otherwise in question. A suitable alternative we suggest is the recommendation found on page 381 of the Porter Commission report that auditors should be chosen from a panel of highly qualified auditors approved by the authorities.

c) Regulations

Section 22 of the Bill provides that the Governor in Council may make such regulations as he considers appropriate to secure the establishment and maintenance of a sound financial structure for investment companies. Such regulations may pertain to levels of paid-up capital and surplus, ratios of outstanding debt to paid-up capital and surplus, liquidity of assets, rules for valuation of assets and liabilities and so on.

The discretionary powers this section vests in the Governor in Council are too wide. Also we are opposed to any statutory imposition of extensive asset, liability and capital ratios.

Our views in this regard are supported extensively in the Porter Report and we would refer you to the pertinent sections found on pages 357 - 358, 375, 380, 383 - 385, and 394 - 395 of that Report.

The conclusion of the Porter Commission concerning asset ratios and the like is found at page 375 where the Commission states:

"The safety of the public's funds and the responsiveness of the institution to monetary measures is not promoted by the imposition of extensive asset ratios or prohibitions on banks and their competitors."

and at page 357 of the same report:

"An effectively executed and well designed system of regulation need not lead to excessively rigid and detailed procedures which increase the cost and reduce the efficiency and flexibility of the

financial systems. In our view, the goal of protecting the public against loss can best be achieved with three basic legislative safeguards — adequate disclosure, competent supervision, and legal powers giving the authorities the right to force the correction of unsound and unfair practices and to prosecute those engaged in fraudulent or criminal activities."

We fully support the views quoted above on how the goal of protecting the investing public can best be achieved. We have already indicated that proper supervision — under the Inspector General of Banks — would be desirable. Of equal or greater importance, however, would be the requirement for adequate disclosure.

Such disclosure is presently being provided by I.A.C. and similar companies to investors through the CANSAF (Canadian Sales Finance Long Form Report) and Robert Morris Questionnaires as well as through the individual company's own financial forms of report.

As noted earlier in our brief we have filed copies of all of these reports for I.A.C. with the Secretary and we hope they will be of assistance to the Committee.

Conclusion

While it is realized that the setting-up of an adequate system for the operation of industrial banks is not simple, the enactment of a statute containing the provisions mentioned above would provide reasonable protection for investors in companies carrying on industrial banking business and having substantial short-term liabilities. A more detailed statute might be devised in the future but, for the time being, such of the provisions of the Bank Act as appear appropriate could be made applicable to industrial banks by reference.

What appears to be essential at the present time is to avoid the appearance of the provision of adequate regulation while doing nothing, in effect, but duplicating provisions presently applicable under provincial statutes. The investing public, and particularly international investors, wish to have some way of identifying the large well-managed and adequately protected financial institutions.

Should the financial institutions carrying on the business of industrial banks be designated under the law as registered industrial banks, licensed industrial banks or chartered industrial banks and be required to maintain adequate reserves and be provided with credit lines-of-last-resort, such federally incorporated companies would quickly become recognized and disassociated from the type of company which has no sound financial foundation.

A provision which would permit companies of provincial incorporation to become registered as industrial banks upon fulfilment of the requirements of the Act in relation to capital, inspection, reserves, credit lines-of-last-resort, and the like would soon attract the better provincial companies and, by necessary implication, exclude from the corporations entitled to the confidence of investors all corporations which do not become so registered.

RECOMMENDED AMENDMENTS OF BILL S-17

The amendments recommended in respect of Bill S-17 in order to incorporate the basic provisions relating to "Industrial Banks" would require that this class of institution, which has been the subject of extensive study by many governmental bodies in the recent past and which merit prompt attention, should be dealt with in a separate part of the Act.

This would mean that a new Part III should follow Part II, and the general provisions such as contained in the present Part III should be designated as Part IV.

The provisions of Part III would be, in summary, the following:

- (1) a definition of "Industrial Banks" similar or analogous to that contained in Regulation 101-67 of the Ontario Securities Commission, which is set out earlier (on page 9) of this brief;
- (2) a provision that all federally incorporated companies falling within that definition should be required to register as "Industrial Banks";
- (3) a provision analogous to Section 16 of the Canada Deposit Insurance Corporation Act, Chapter 70, 14-15-16 Elizabeth II which would permit a provincially incorporated company to apply for registration as an "Industrial Bank";
- (4) provisions relating to cancellation of registration analogous to Section 25 and following of the Canada Deposit Insurance Corporation Act;
- (5) the inclusion by specific legislation or by reference to the following sections of the Bank Act:
 - (a) Section 29 concerning reports to be made to the directors in relation to non current loans;
 - (b) Sections 60 to 62 inclusive, concerning annual and other statements to be submitted to shareholders;
 - (c) Section 63 concerning the appointment of and reporting by auditors;
 - (d) Sections 64 to 68 inclusive concerning the Inspector General of Banks and his powers and duties;
 - (e) Sections 103 to 107 inclusive concerning returns to be made to the Minister;
 - (f) Sections 139 and 140 concerning inspection;
 - (g) Sections 152 and 153 concerning penalties for failure to make returns and for false statements.

- (6) a provision requiring the maintenance of reserves of securities of a kind approved by the Inspector General of Banks in an amount equal to $12\frac{1}{2}\%$ of outstanding debt securities of such a bank which have been issued with a maturity of one year or less;
- (7) a provision providing for a credit line-of-last-resort available to "Industrial Banks" while their registration is duly maintained, in an amount equal to the amount of the reserves required of and maintained by such banks.

APPENDIX "B"



THE CANADIAN
MANUFACTURERS'
ASSOCIATION

87 YONGE STREET, TORONTO 1, ONT

OFFICE OF EXECUTIVE VICE-PRESIDENT AND GENERAL MANAGER

February 21, 1969

The Honourable Salter A. Hayden, Chairman
and Members of the
Senate Committee on Banking, Trade and Commerce,
The Senate,
Ottawa, Ontario.

Gentlemen,

Bill S-17, An Act respecting Investment Companies

The Canadian Manufacturers' Association appreciates this opportunity
of submitting to you its views on Bill S-17, An Act respecting
Investment Companies.

The Canadian Manufacturers' Association was established 98 years
ago with the object and aim of promoting manufacturing in Canada.
It is a non-profit, non-political organization of approximately 6,800
manufacturers in every branch of industry situated in 600 communities
from coast to coast. Its membership includes firms of all sizes,
three-quarters of which individually employ fewer than 100 persons.
It is estimated that the production of its members amounts to about
75 per cent of Canada's total manufacturing output.



VANCOUVER • EDMONTON • WINNIPEG • TORONTO • OTTAWA • MONTREAL • QUEBEC • MONCTON

The Association is concerned that the proposed legislation goes far beyond the ordinary concept of an investment company to include a number of manufacturing companies. This is evident from Sections 2 and 3 of the Bill.

It is provided in Section 3 that the Bill applies to all investment companies.

"Investment company" is defined in Section 2(1)(f)(ii) to include a company "that carries on the business of investment and at least twenty-five per cent of the assets of which are used as described in subparagraphs (i) and (ii) of paragraph (b)...." The "business of investment" is in turn defined in paragraph (b) of Section 2(1) to mean "the borrowing of money by the company on the security of its bonds, debentures, notes or other evidences of indebtedness, and the use of some or all of the assets of the company for (ii) the purchase of

- (A) bonds, debentures, notes or other evidences of indebtedness of individuals or corporations,
- (B) shares of corporations,
- (C) bonds, debentures, notes or other evidences of indebtedness of or guaranteed by a government or a municipality,
- (D) real property other than real property that is necessary or convenient for the transaction of the business of the company, or
- (E) instalment sales contracts".

As a consequence of the wording of these definitions it is clear that manufacturing companies which are in no sense investment companies can be subject to the proposed legislation by reason of their borrowing of money and their ownership of the shares of a subsidiary company. An example of this would be a small or moderate-sized company which owns the shares of a large subsidiary. The specified percentage of assets set out in the above definition need not, however, consist wholly of shares of corporations, but could be made up in whole or in part of government or corporation bonds or other evidences of indebtedness or of certain real property. It should also be noted that a manufacturing company would come under the legislation if the use of its assets for the purposes described temporarily exceeds the 25 per cent limit.

The Canadian Manufacturers' Association is of the opinion that the Bill, by reason of the definitions contained in Section 2, is too wide in its coverage. It submits that the scope of the legislation should be restricted to what are ordinarily understood as investment companies and not include manufacturing companies. We do not agree that the broad coverage can be justified as a means of enabling the Government to study and obtain information regarding investment and related companies in order to ascertain what regulatory provisions are appropriate for certain types of companies.

While it is recognized that under Section 3(2) of the Bill the Minister is empowered to grant exemptions from the application of the Act where the business of investment is incidental to the company's principal business, it is submitted that manufacturing companies should not be subjected to the burden of making such applications. In the Association's view the Act should be so worded that manufacturing companies are excluded from the definition of investment company rather than the matter be left to the discretion of the Minister on the application of the company.

The Association therefore urges that the scope of Bill S-17 should be narrowed by more precise definitions so that it would apply solely to companies which are in the generally accepted sense investment companies and not to manufacturing companies.

In this respect, it is submitted that the definition of "investment company" as set out in paragraph (f)(ii) of Section 2(1) of the Bill should be amended along the following lines:

- (1) Replacement of the words "25 per cent of the assets" by the words "50 per cent of the assets";
- (2) By providing that loans to, and investments in, operating subsidiaries or affiliates engaged in the production, processing and/or sale of goods or non-financial services or in the ownership of facilities used, or acquired for use, in the production, processing and/or sale of goods are excluded from the definition.

Alternatively it is suggested that consideration be given to adoption of the definition of "investment company" as found in the Investment Act of 1940 of the United States. A copy of Section 3(a) of that Act together with a reference to Sections 3(b) and 3(c) is attached for your information.

It should also be noted that for other significant purposes of the Canadian Government a definition of "investment company" may be found in Section 69(2) of the Canadian Income Tax Act.

Respectfully submitted,



J. C. Whitelaw.

Enc:

APPENDIX

Extract from United States Investment Companies Act of 1940
(Public Law Number 768 - 76th Congress)

Section 3(a)

When used in this title, "investment company" means any issuer which

- (i) is or holds itself out as being engaged primarily, or proposes to engage primarily in the business of investing, re-investing or trading in securities,
- (ii) is engaged or proposes to engage in the business of issuing face-amount certificates of the instalment type, or has been engaged in such business and has any such certificate outstanding, or
- (iii) is engaged or proposes to engage in the business of investing, re-investing, owning, holding or trading in securities and owns or proposes to acquire investment securities having a value exceeding 40 per cent of the value of such issuers total assets (exclusive of government securities and cash items) on an unconsolidated basis.

As used in this section, "investment securities" includes all securities except

- (a) government securities,
- (b) securities issued by employees "security companies", and
- (c) securities issued by majority-owned subsidiaries of the owner which are not investment companies.

Section 3 also contains sub-sections (b) and (c) which contain a number of specific exceptions to the foregoing. One of particular interest in the context is Section 3(b)(i) "Any issuer primarily engaged, directly or through a wholly owned subsidiary or subsidiaries, in a business or businesses other than that of investing, re-investing, owning, holding or trading in securities".

APPENDIX "C"

SUBMISSION
TO THE
SENATE COMMITTEE ON BANKING AND COMMERCE
BY
THE ASSOCIATION OF CANADIAN INVESTMENT COMPANIES
WITH THE SUPPORT OF
A GROUP OF CANADIAN CORPORATIONS
CONCERNED WITH INVESTMENT
REGARDING
THE SENATE OF CANADA BILL S-17

JANUARY 1969

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SUBMISSION TO
THE SENATE OF CANADA COMMITTEE ON BANKING AND COMMERCE
REGARDING BILL S-17

INTRODUCTION

This submission is made by the Association of Canadian Investment Companies, supported by a group of Canadian corporations which are concerned with investment. The names of members of the Association and supporting corporations are listed on Appendix "A", page 10. Total assets of these, at consolidated 1967 book value, approximate \$3 billion and substantially more with investments valued at the market.

At the outset, it must be stressed that by no means are we averse to the appropriate supervision and control of corporate activities by government authorities, wherever this is demonstrated as being necessary for protection of the public. Nevertheless, we are firmly convinced that the extremely broad application of Bill S-17, combined with some of its most restrictive regulatory provisions and the discretionary powers given thereunder to the responsible Minister, would result in an uncertain and inhibiting situation with respect to Canadian corporate affairs and investment by Canadians in Canadian equities.

Reference is made to a recent submission of the Association of Canadian Investment Companies to the Ministers of Finance and of Consumer and Corporate Affairs (Appendix "B", separate cover.) This submission relates mainly to the Report of the Watkins Task Force; and it contains proposals aimed at achieving more effective participation of closed-end investment companies, including the proposed Canada Development Corporation, in increasing Canadian ownership and control of economic activity in this country. It is contended that, if enacted in its present form, Bill S-17 would have completely the reverse effect.

A large number of Canadian manufacturing and service corporations, which hold investments in operating subsidiaries, would be subject to the provisions of the Bill. This could have a most detrimental effect on the efficiency of their operations and might even make it impossible for many of them to raise capital and carry on business. Other similar companies would be exempt by reason of absence of debt in their capital structures, or because they are operating under provincial charters.

We propose, in this memorandum, to discuss in some detail the specific sections and subsections of the Bill which would be, in our opinion, most detrimental to the effectiveness of normal corporate and inter-corporate activities. We include certain recommendations which may assist you in the study of this proposed legislation, with a view to the achievement of the desired end results.

INTERPRETATION AND APPLICATION (Sections 1, 2, 3 and 4)

It is our opinion that application of the proposed Act to "all investment companies," coupled with the interpretations of "investment company" and "business of investment" under sections 2 and 3, would subject many more corporations to supervision and regulation than is necessary to reasonably protect those lenders and investors that need protection in present circumstances.

Reference is made to Appendix "C" on page 12, which is a comparative tabulation showing capitalization ratios and numbers of equity holdings of selected investment companies, divided into four distinct groups. These are finance, property development, operating (or manufacturing) and closed-end investment companies, many of which actually would not be subject to the proposed Act. The table brings out the pattern of normally high debt ratios of finance companies, ratios generally not exceeding 66 2/3% on the part of realty and operating companies, and very modest proportions or absence of debt in the case of closed-end investment companies.

The assets supporting the borrowings of these corporate groups are very different in nature. Those of the closed-end investment companies, for the most part, are securities of established and soundly diversified Canadian corporations; operating company assets are mainly plant, machinery and equipment; realty companies borrow against revenue producing properties and long-term leases; and the assets of finance companies consist in very large measure of short and medium term finance receivables.

Practically every Canadian company in operation at one time or another must have occasion to "borrow money" and also must have occasion to make "loans." Section 14 of the Canada Corporations Act recognises the notion of the investment of surplus funds of a company from time to time as distinct from the operations of a company in the ordinary course of its business; and certain loans are recognized as proper for all companies under section 15. In our opinion, there should be a general exemption for parent-subsidiary or inter-company financing within a pure holding company structure, or one of a mixed operating-holding company.

We firmly object to the concept of a Minister granting exemptions, as under subsection (2) of section 3. If the proposed Act properly defines the scope of the companies to be covered, then the burden is on each company concerned to see that it keeps within the terms of the Act. The Minister would be amply protected by the provisions of sections 5, 6 and 7 regarding the filing of annual statements and investigation by the Superintendent of Insurance. Moreover, we are concerned particularly by the possible consequences of subsections (4) and (5) of section 3, which effectively give priority to the provisions of the proposed Act in the event of any conflict with Letters Patent or an Act of incorporation.

While it may have a low priority amongst the list of items to be attacked, section 4 of the Bill is also the potential source of much ambiguity. In view of the broad definition on the one hand and the limited importance of corporate powers and the ultra vires rule on the other hand, it would be difficult for anyone to know whether a company was really incorporated "primarily for the purpose of carrying on the business of investment." Is there an implied suggestion that the scope of the Act will apply or fail to apply depending upon whether or not there is such an insertion in the Letters Patent? In other words, the Government authorities who issue the Letters Patent will have to make a guess as to future operations which in some cases is bound to be wrong one way or the other.

We cannot over-emphasize our following convictions, which have particular reference to sections 2, 3 and 8, as well as to certain sections of Parts II and III of the proposed Act:

- 1) The Act should be clear and specific and all definitions and interpretations should be included therein rather than partly by regulation;
- 2) No discretion should be vested in the Minister and all decisions by him should be subject to appeal in the courts;
- 3) The Act should not override the provisions of any other Act and, particularly, should not apply to cases contemplated and covered by the Canada Corporations Act - e.g. loans to employees and officers (section 15 of the CCA) and prospectus provisions (section 77) - and should not duplicate the work of the securities commissions.

Recommendations

Section 2 -

It is recommended that paragraph (b) of subsection (1) be replaced by the following:

(b) "business of investment" with respect to a company means the borrowing of money by the company on the security of its bonds, debentures, notes or other evidences of indebtedness, but excluding borrowings under a prospectus made for a term of eighteen months or more, or borrowings from banks, insurance companies, trust companies and other exempt institutions, or from substantial shareholders of the company within the meaning of paragraph (b) of subsection (3) of section 8, and the use of some or all of the assets of the company for

- (i) the making of loans whether secured or unsecured maturing more than eighteen months after the date of issue, but excluding loans under the provisions of section 15 of the Canada Corporations Act, or
- (ii) the purchase of
 - (A) bonds, debentures, notes or other evidences of indebtedness of individuals or corporations,
 - (B) shares of corporations,
 - (C) bonds, debentures, notes or other evidences of indebtedness of or guaranteed by a government or municipality,
 - (D) real property other than real property that is necessary or convenient for the transaction of the business of the company, or
 - (E) instalment sales contracts,

but does not include inter-company transactions between parent and subsidiary corporations, between subsidiaries of the same parent corporation, or between associated and affiliated companies within a holding company or an operating-holding company structure.

It is further recommended that paragraph (f) of subsection (1) be amended by replacing subparagraph (ii) by the following:

- (ii) that carries on the business of investment and at least 25% of the assets of which are used as described in subparagraphs (i) and (ii) of paragraph (b), valuation of such assets being determined in accordance with accepted accounting principles consistently applied throughout the fiscal year of the company;

and by inserting after the word "applies" on line 32 of page 2:

or a corporation to which Part II of the Canada Corporations Act applies, or a company that carries on directly or indirectly through subsidiaries an active industrial or commercial business, or a company which qualifies as an investment company under section 69 of the Income Tax Act.

It is further recommended that subsection (2) of section 69 of the Income Tax Act be amended in accordance with the recommendations on pages 4 to 7 of Appendix "B", to read as shown on Appendix "D" hereto.

Section 3 -

It is recommended that subsections (2), (3), (4) and (5) be eliminated.

Section 4 -

It is recommended that this section be eliminated.

ANNUAL STATEMENT AND INSPECTION (Sections 5, 6 and 7)

It is our experience that subject companies would be put to considerable additional expense and difficulty in meeting the required filing deadline established by subsection (1) of section 5, as no large company normally is likely to have its annual financial statements prepared before the end of at least 120 days. It is also our contention that the information contained in such statements, as well as in the statements of subsidiaries submitted pursuant to subsection (3), should not be public information, but solely for the purposes of the Superintendent of Insurance and his staff.

Moreover, we feel strongly that it would be improper for the Superintendent to have direct access to a company's auditor, as provided under subsection (6) of section 5. The auditor is not a company officer and acts in a strictly professional capacity. In addition, he is prohibited from divulging information to anyone outside a company for which he is acting without the permission of its directors.

Reference to "oral" statements should be eliminated from subsection (b) of section 7, as this would only lead to possible accusations against either the officers or government inspectors. In view of the very severe penalties for any breach of the proposed Act, such conflicts would be most undesirable.

Recommendations

Section 5 -

It is recommended that subsection (1) be amended to provide that statements be filed "120 days" after the end of its fiscal year, instead of two months, and that subsection (6) be amended by striking the word "auditor" on the third line.

It is further recommended that an additional subsection be included, as follows:

(7) All information submitted to the Superintendent under this section, or made available to an inspector under section 6, shall be solely for the purposes of the Superintendent and his staff and shall not be public information.

Section 7 -

It is recommended that subsection (b) be amended by inserting the word "wilfully", at the start of line 36, and eliminating the word "orally" from line 37 of page 6.

PROHIBITED LOANS AND INVESTMENTS (Section 8)

It is quite proper that there be prohibitions against certain loans and investments where there may be a conflict of interests. However, it is our contention that these should be applied equally to all Canadian corporations and not in such a way as to inhibit the effective operations of a selected group of companies.

Financial assistance to shareholders or directors of a company already is covered by section 15 of the Canada Corporations Act. If abuses have occurred, we maintain that this section of the Canada Corporations Act should be amended appropriately, so as to apply the necessary restrictions to all companies incorporated thereunder. We also contend that one of the best means of protecting the investing public is adequate disclosure of corporate operations and financial position, as well as insider and non-arms-length transactions, and that this should be effected through the anticipated federal securities legislation.

Application of paragraphs (b) and (c) of subsection (1) of section 8 of the Bill to a company could have some very unfortunate results. For example, they could prevent it from effecting the take-over of a second company by way of a share exchange offer should the second company have more than a 10% interest in the first, or acquire such an interest in order to abort the offer, or should an individual holding interests in the two companies increase each such interest to more than 10%. Furthermore, exchanges of holdings between parent and subsidiary corporations, or subsidiaries of the same parent, could be prevented in cases where payments or balances of payments could only be made by way of promissory notes. There are many other examples of advances and temporary transactions between associated companies, which greatly enhance the effectiveness and economy of their operations, but which would be prohibited under subsections (1) and (2) of section 8.

With respect to subsection (2), we maintain that as drafted, this already has created a most serious condition of uncertainty, and that any prohibitions under subsection (1) should be effective only from the date on which the proposed Act comes into force.

There can be no doubt that the application of stringent regulations to certain groups of companies, in many cases on the basis of what we believe to be irrelevant considerations, would result in such companies being placed in an unfair and impaired competitive position. We further believe that such broadly selective limitation of the present freedom of corporate action would encompass some of Canada's most creative and successful organizations. This could only discourage entrepreneurial activities and investments by Canadians in this country. Moreover, it would enormously hamper Canadian companies from acquiring other Canadian companies and would force sellers all the more certainly to look to American purchasers.

A future holding company type of operation would be absolutely prohibited. There could be no purchase of shares in the company where a director, officer or substantial shareholder has a significant interest. Where there are inter-corporate relationships, all kinds of new impediments to investment would arise. No doubt this was intended to offer some protection to the other shareholders concerned but in many instances it would narrow the market for their shares and cause a depreciation in values. The draftsman of the legislation perhaps wisely ignores the highly

practical problem of how a company is to recognise its own shareholders when the holdings may be recorded in the names of nominees.

It is our contention that the possibility of exemption from the prohibitions under section 8, as provided in subsections (4), (5) and (6), because of the resulting delays and uncertainties and the very broad discretionary powers given therein to the responsible Minister, would do little to ameliorate the unfortunate conditions discussed above.

Recommendations

Section 8 -

It is recommended that subsection (2) be deleted.

It is further recommended that paragraph (d) of subsection (3) be amended by replacing lines 30 to 35 of page 8 by the following:

but does not include

- (A) an advance or loan, whether secured or unsecured, that is made by an investment company to a corporation and that is merely ancillary to the main business of the investment company,
- (B) a loan under the provisions of section 15 of the Canada Corporations Act,
- (C) an inter-company transaction between parent company and subsidiary, between subsidiaries of the same parent company, or between associated and affiliated companies within a holding company or operating-holding company structure, or
- (D) an advance or loan, balance of purchase price whether secured or unsecured, or extended terms of credit for payment of goods and services provided by the company.

It is further recommended that subsections (5) and (6) be eliminated and that any exemption under subsection (4) shall be irrevocable and shall not be subject to any conditions.

CERTIFICATES OF REGISTRY (Sections 9 to 20)

We must stress our objection to the fact that, as the Bill is drafted, the Certificate is granted only on the Minister's discretion and may be reduced, renewed and cancelled under such conditions and limitations as he may determine. We object, in particular, to the powers granted the Minister by subsection (2) of section 10 and under section 15. Moreover, we reiterate that all reports of the Superintendent to the Minister under sections 15 and 20 should be clearly stated to be confidential.

Reference is made to section 12. No doubt the framework of this section contemplated that a mandatory death sentence is the most effective punishment for wrong-doers. Given certain circumstances a company must be dissolved. What happens to any law suits pending at the time against the company, any litigious claims by creditors which are being contested or for that matter any tax issues currently under litigation? Once a company is dissolved, any law suits currently pending can no longer be prosecuted in the courts! When a company is "dissolved" there is at least a colour of right in distributing assets to shareholders. The unpaid creditors may have some claim against these shareholders, but suppose that they are numerous or that, in whole or in part, they are non-residents of Canada.

It is noted that under subsection (4) of section 13 the directors are subject to a double liability, one under that subsection and one under the general provisions of Part III. This requires clarification.

It is essential, with respect to sections 14, 16 and 17, that the company concerned has adequate opportunity to make representations and the right of appeal to the courts, also that the Minister can exercise the rights under sections 16 and 17 only in the case of fraud or dishonesty.

We submit that implementation of the provisions of subsections (2) and (3) of section 20 could make it virtually impossible for a company to carry on business. It is our opinion that directors and auditors would refuse to approve the financial statements of a company subject to these provisions.

Recommendations

Section 9 -

It is recommended that this section be eliminated, as well as reference thereto in section 11.

Section 10 -

It is recommended that subsection (2) be struck out, as well as all references thereto in the Bill.

Section 12 -

It is recommended that this section be eliminated in its entirety.

Section 13 -

It is recommended that subsections (4) and (5) be eliminated.

Section 15 -

It is recommended that this section be amended to eliminate all provisions relating to the withdrawal of certificates of registry, i.e., paragraphs (b) and (c) of subsection (3) and subsections (5), (6) and (7), also that the following be added at the end of subsection (1) on line 12 of page 16:

all information contained in such report being solely for the purposes of the Superintendent, the Minister and their staffs and the company and shall not be public information.

It is further recommended that a new section, 18, be inserted to follow section 17, providing for the right of appeal to the courts by a company against any decision of the responsible Minister with respect to: (a) his refusal to issue a certificate of registry, under section 14, or to renew such a certificate; (b) an application made on his behalf to a superior court, under subsection (1) of section 16; or an application made on his behalf to a court, under subsection (1) of section 17. The new section 18 also should provide that rights of the Minister under sections 16 and 17 can only be exercised in the case of fraud or dishonesty. As a result of this, the numbers of all following sections would be increased by one.

Section 20 -

It is recommended that this section be amended by striking out subsections (2) and (3) and replacing them by a new subsection, as follows:

(2) All information submitted to the Minister under this section shall be solely for the purposes of the Superintendent, the Minister and their staffs and shall not be public information.

ASSESSMENTS AND REGULATIONS (Sections 21 and 22)

We are greatly disturbed by two sections of Part III of the Bill, namely sections 21 and 22.

Our contention is that expenditures incurred for or in connection with administration of the proposed Act would be related, for the most part, to relatively few companies whose financial condition and affairs might require particular scrutiny by the Superintendent of Insurance and his staff. Indeed, it is our opinion that the companies subject to the proposed Act should in no way be assessed to cover the cost of its administration, and that this would be a particularly repugnant form of taxation.

Supervision and regulation of insurance companies, trust companies and loan companies are now carried on by the Superintendent of Insurance under the Department of Insurance Act. Government expenditures relating to administration of the various special Acts are allocated as follows:

Insurance companies - in proportion to net premiums
Loan companies - in proportion to income
Trust companies - " " " "

Clearly, similar types of companies are treated in a relatively consistent fashion.

In contrast, expenditures relating to administration of the proposed Act, under section 21 would be assessed on the basis of income against companies wherein the relationships of income (so far undefined) to assets or capital employed might be widely divergent.

We are firmly convinced that application of section 22, as drafted, would be so unacceptable to most sound and reputable corporations that they would be forced to reorganize and seek charters in other jurisdictions. It is our belief that directors of such companies would not remain in office and surrender their normal responsibilities and prerogatives to this degree.

The scope of the regulations, which the Governor in Council may make, should be given in full detail and circumscribed and limited to regulations necessary for the enforcement of the proposed Act in accordance with its provisions and not, as apparently is the case according to the draft, to have the same force and effect as if the regulations form part of the Act.

Recommendations

Section 21 -

Should any assessments be imposed, it is recommended that they be on the basis of a fixed tariff and that this be applied in relation to each subject company's unconsolidated debt, including short-term obligations. There would be a certain logic to this basis of assessment as it would relate directly to the main purpose of the proposed legislation, i.e., the protection of creditors.

It is further recommended that provision be made for the right of appeal by a company in an appropriate court of law against the determination of expenses or the assessment.

Section 22 -

It is recommended that this section as drafted be struck out.

CONCLUDING REMARKS

Although our above comments and recommendations are strongly critical of certain provisions of the Bill, it must be stressed that they are submitted in all sincerity in an effort to be of some immediate assistance in producing a sound and practical piece of legislation.

In view of its far-reaching effects on the affairs of the companies concerned, as well as on the nation's economy, we urge that the Bill be given the most thorough study, that your Committee employ every opportunity to hear and consider constructive opinions and suggestions from all interested parties, and that it be amended appropriately prior to its enactment. In particular, representatives of the group of companies responsible for this submission request the opportunity of appearing before your Committee, at its convenience, in order to answer questions and make such further representations as may be required.

Respectfully submitted,

ASSOCIATION OF CANADIAN INVESTMENT COMPANIES

Henry R. Jackman
President

J.V. Emory
Vice-President

MEMBERS OF
THE ASSOCIATION OF CANADIAN INVESTMENT COMPANIES

All Canadian-American Investments Limited
Canadian & Foreign Securities Co. Limited
Canadian International Investment Trust Limited
Central Fund of Canada Limited
Consolidated Diversified Standard Securities, Limited
Dominion & Anglo Investment Corporation Limited
Dominion-Scottish Investments Limited
Economic Investment Trust Limited
The Fulcrum Investment Company Limited
Great Britain & Canada Investments (1968) Limited
Life Investors Limited
Magnum Fund Limited
MPG Investment Corporation Limited
Pacific Atlantic Canadian Investment Company Ltd.
Power Corporation of Canada, Limited
Toronto and London Investment Company Ltd.
United Corporations Limited

CORPORATIONS SUPPORTING THIS SUBMISSION

Distillers Corporation-Seagrams Limited
Domtar Limited
Massey-Ferguson Limited
Southam Press Limited
Standard Broadcasting Corporation Limited
Warnock Hersey International Limited

APPENDIX "B"
(Separate Cover)

SUBMISSION
OF THE
ASSOCIATION OF CANADIAN INVESTMENT COMPANIES
TO
THE MINISTER OF FINANCE
AND
THE MINISTER OF CONSUMER AND CORPORATE AFFAIRS
REGARDING

1. THE REPORT OF THE TASK FORCE ON THE STRUCTURE
OF CANADIAN INDUSTRY
2. PREVIOUS SUBMISSIONS OF OUR ASSOCIATION
3. SECTION 69 OF THE INCOME TAX ACT
4. CLOSED-END INVESTMENT COMPANY INCENTIVES
5. THE CANADA DEVELOPMENT CORPORATION

NOVEMBER 1968

EXAMPLES OF FOUR DISTINCT GROUPS OF CANADIAN INVESTMENT COMPANIES
SHOWING CAPITALIZATION RATIOS AND NUMBERS OF EQUITY HOLDINGS
(Amounts in Millions of Dollars)

APPENDIX "C"

Company	Charter	Consolidated Debt Ex. Bank Loans		Preferred Stock		Common Stock & Retained Earnings		Total Capitalization		Approximate No. of Equit Holdings
		Amount		Amount		Amount		Amount		
FINANCE INVESTMENT COMPANIES										
Industrial Acceptance Corp. Ltd. (1967)	Fed.	\$ 720.2	82.3%	\$ 21.5	2.5%	\$ 132.6	15.2%	\$ 874.3	100.0%	13
General Motors Acceptance Corp. of Canada Ltd. (1967)	Fed.	449.0	96.1	-	-	18.5	3.9	467.5	100.0	-
Traders Group Ltd. (1967)	Fed.	351.7	81.9	14.6	3.4	63.0	14.7	429.3	100.0	20
Avco Delta Corp., Canada Ltd., (1967)	Ont.	206.2	81.2	18.4	7.3	19.1	7.5	243.7	100.0	5
Laurentide Financial Corp. Ltd., (1968)	B.C.	112.8	70.1	26.6	16.5	21.5	13.4	160.9	100.0	4
Union Acceptance Corp. Ltd., (1967)	Ont.	46.0	83.0	2.5	4.5	6.9	12.5(1)	55.4	100.0	4
REALTY INVESTMENT COMPANIES										
Canadian Interurban Properties Ltd. (1967)	Ont.	\$ 46.8	66.1%	-	-	\$ 24.0	32.9%	\$ 70.8	100.0%	7
Revenue Properties Company Ltd. (1967)	Ont.	56.8	81.0	-	-	13.3	19.0	70.1	100.0	4
M.E.P.C., Canadian Properties Ltd., (1967)	Ont.	24.0	62.0	\$ 2.5	6.5%	12.2	31.5	38.7	100.0	8
Bramalea Consolidated Developments Ltd., (1967)	Ont.	21.0	63.5	-	-	12.1	36.5	33.1	100.0	11
Peel-Elder Limited (1967)	Ont.	10.5	69.1	-	-	4.7	30.9	15.2	100.0	6
Canadian Allied Property Investments Ltd., (1967)	B.C.	8.5	71.4	-	-	3.4	28.6	11.9	100.0	3
OPERATING INVESTMENT COMPANIES										
Canadian Pacific Railway Co., (1967)	Fed.	\$ 448.8	24.7%	\$ 91.0	5.0%	\$ 1,281.3	70.3%	\$ 1,821.2	100.0%	40(2)
Alcan Aluminium Limited (1967)	Fed.	698.9	46.2	118.0	7.8	696.4	46.0	1,513.3	100.0	75(2)
Massey-Ferguson Limited (1967)	Fed.	161.2	26.9	-	-	437.1	73.1	598.3	100.0	48
Noranda Mines Limited (1967)	Ont.	85.2	24.0	-	-	269.9	76.0	355.1	100.0	45
Consolidated-Bathurst Limited (1967)	Fed.	117.5	35.9	45.3	13.9	164.2	50.2	327.0	100.0	14
Dominion Textile Company Ltd., (1967)	Fed.	52.0	41.4	1.4	1.1	72.3	57.5	125.7	100.0	9
CLOSED-END INVESTMENT COMPANIES										
Power Corporation of Canada Ltd., (1968)	Fed.	\$ 31.0	12.7%	\$ 88.1	35.9%	\$ 126.1	51.4%	\$ 245.2	100.0%	20
Argus Corporation Ltd., (1967)	Ont.	10.0	11.9	53.0	62.9	21.2	25.2	84.2	100.0	7
United Corporations Limited (1967)	Fed.	-	-	6.0	11.0	48.7	89.0	54.7	100.0	90
Canadian General Investments Ltd., (1967)	Ont.	-	-	8.0	20.4	31.1	79.6	39.1	100.0	45
Great Britain and Canada Investment Corp., (1967)	Que.,(3)	1.5	5.9	6.0	23.6	17.9	70.5	25.4	100.0	70
Dominion-Scottish Investments Ltd., (1967)	Fed.	2.0	11.5	3.0	17.2	12.4	71.3	17.4	100.0	56

Notes: (1) Including participating preferred.
(2) Including holdings of subsidiaries.
(3) All assets being transferred to new federally chartered corporation and capital exchanged.

APPENDIX "D"

SECTION 69(2) OF THE INCOME TAX ACT, AS AMENDED
IN ACCORDANCE WITH RECOMMENDATIONS OF THE
ASSOCIATION OF CANADIAN INVESTMENT COMPANIES
IN SUBMISSION OF NOVEMBER, 1968

69(2) "Investment company" defined. In this Act, "investment company" means a corporation that, in respect of the taxation year in respect of which the expression is being applied, complied with the following conditions:

- (a) at least 80% of its property was, throughout the year, shares, bonds, debentures, short-term notes, marketable securities or cash,
- (b) not less than 90% of its income for the year, excluding management fees, was derived from investments mentioned in paragraph (a),
- (ba) not less than an average of 75% of its gross revenue for the year and the two preceding years was from sources in Canada,
- (bb) not more than an average of 35% of its gross revenue for the year and the two preceding years was from interest,
- (c) at no time in the year did more than 25% of its property consist of shares, bonds or securities of any one corporation or debtor other than Her Majesty in right of Canada or of a province or a Canadian municipality,
- (d) at no time in the year was the number of shareholders of the corporation less than 50, none of whom at any time in the year held more than 25% of the shares of the capital stock of the corporation, and
- (e) an amount not less than an average of 85% of its taxable income plus exempt income for the year and the two preceding years (other than dividends or interest received in the form of shares, bonds or other securities that have not been sold before the end of the taxation year) minus
 - (i) 21% of its taxable income for the year, and
 - (ii) taxes paid in the year to other governments,was distributed to the shareholders before the end of a 60 day period following the end of the year,

but should the corporation find itself in default with respect to any of the above conditions, as the result of inadvertent oversights, or for reasons beyond its control, it shall be permitted a period of 60 days from discovery thereof to rectify such default or defaults.

(To accompany Submission to the Senate Committee
on Banking and Commerce by the Association of
Canadian Investment Companies, regarding Bill S-17.)

SUBMISSION
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ASSOCIATION OF CANADIAN INVESTMENT COMPANIES
TO
THE MINISTER OF FINANCE
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1. THE REPORT OF THE TASK FORCE ON THE STRUCTURE
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5. THE CANADA DEVELOPMENT CORPORATION

NOVEMBER 1968

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EXHIBIT "A"

Latest Quarterly Report on Asset and Share Values of Association Member Companies.	11
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EXHIBIT "B"

Percentage Distributions of Composite Portfolio of Association Member Companies.	12
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EXHIBIT "C"

Copy of Submission, dated October 1967, to the Minister of Finance regarding the Report of the Royal Commission on Taxation.

INTRODUCTION

This submission by the Association of Canadian Investment Companies is made in response to the request for formal submissions on the Watkins Report. The members of this Association are vitally involved in the entrepreneurial and portfolio investment of substantial pools of savings, mainly in Canadian equities.

It is our belief that encouragement of the healthy growth and development of such investment companies would constitute one of the best means of achieving some of the objectives sought by the Watkins Task Force. In addition, we are convinced that many of our recommendations and comments in this submission apply with the same validity to the proposed Canada Development Corporation as to existing closed-end investment companies.

We submit that greatly enhanced scope and effectiveness of these investment companies will be required in order to permit them to fulfill their proper role under the "new national policy" anticipated in the Report's conclusion. We submit, further, that it is only by reducing present legislative restrictions and providing essential incentives that they will be enabled to attract equity funds and achieve the desired results.

Within the past five years, this Association has submitted the following briefs:

- November 29, 1963 - to the Royal Commission on Taxation
- April 29, 1966 - to the Minister of Finance regarding the refundable tax on cash profits
- June 23, 1967 - to the Minister of Finance proposing certain equity investment incentives
- October, 1967 - to the Minister of Finance regarding the report of the Royal Commission on Taxation.

This present submission constitutes a consolidation and up-dating of those earlier proposals and comments that are relevant to the recommendations of the Watkins Task Force, as well as to the continuing participation of closed-end investment companies in Canadian economic growth.

CLOSED-END INVESTMENT COMPANIES

A closed-end investment company is an incorporated company, the authorized capital of which is relatively fixed and frequently consists of debt securities and preferred shares as well as common shares. It is a vehicle through which the combined savings of many participants are invested with the objective of producing the greatest possible long-term return, with risk minimized through diversification and constant supervision by experienced investment managers.

The portfolios of closed-end companies usually comprise broadly diversified lists of holdings, mainly equities. However, a number tend to specialize in their investments, holding substantial interests in a few companies and participating actively in their management.

In contrast to the open-end, or mutual funds, the shares of closed-end companies are traded through a stock exchange, or in a few cases on the "over-the-counter" market. It is usual for closed-end companies to have a large list of shareholders, most of whom hold a modest number of shares; but there are examples wherein ownership has tended to become concentrated.

The market price of a closed-end company's shares does not depend on the market value of its underlying securities, but on the demand for and supply of such shares, dividend yields and other factors. The experience in Canada has been that the shares of closed-end companies have traded at substantial discounts below net worth based on net asset values. We believe that the market price of Canada Development Corporation shares would be subject to these same relationships and tendencies. This discount has made it virtually impossible for such companies to expand their operations through the sale of new equity securities. With today's high cost of debt capital, their only practical sources of funds for new investments are the sale of securities in their portfolios, or retained earnings.

According to the Dominion Bureau of Statistics, the composite investment portfolio of all reporting Canadian closed-end companies totalled \$798 million, based on market values, at June 30, 1968, and this amount is higher today. The Association of Canadian Investment Companies represents seventeen closed-end companies with net assets totalling close to \$500 million. Appended, as Exhibit "A", is a list of member companies, showing net assets, net asset value of their shares, market value and discount. Exhibit "B" shows the distribution of their composite portfolio, geographically, by class of security and by industry.

SECTION 69 OF THE INCOME TAX ACT - HISTORY

This section provides for a special tax rate of 21% (including the 3% old age security tax) on the taxable income of "investment companies", followed by a list of conditions which must be met by a company to qualify as such. Following are some brief historical notes on this section of the Act.

- i) Until 1954 the Department of National Revenue recognized the principle that investment companies should not be taxed and, in fact, no tax was levied on their incomes provided 85% was distributed to their shareholders, in whose hands it was, of course, taxable as personal income. Without this exemption for investment companies such income would have been taxable three times: firstly through normal corporation tax, secondly as income to the investment company and thirdly in the hands of the investment company shareholder.
- ii) In 1949, however, a 10% tax credit on all dividends received by individual tax-payers from taxable Canadian companies had been introduced and this was subsequently increased to 20% in 1953. The difficulty then arose that, if companies elected to take investment company status and thereby paid no tax, their shareholders forfeited the right to any dividend tax credit, even on dividends from taxable Canadian companies.
- iii) Accordingly, in 1955, an amendment was made to eliminate this discrimination against the investment company shareholders as compared with the shareholder holding the same investments directly. The exemption of investment companies from tax on dividends received from other taxable Canadian companies was continued and an equalizing tax of 20% was imposed on all other income. This amendment thus enabled the shareholders of investment companies to qualify for the 20% tax credit on dividends received in the same manner as shareholders of other taxable corporations.
- iv) With their shareholders qualifying for the 20% tax credit, however, it was felt that some restrictions should be placed on the sources from which the gross revenue of investment companies was derived and for this reason the 1955 legislation also provided that not less than 60% of an investment company's gross revenue must be derived from dividends from taxable Canadian corporations. As a result of representation against this restriction, it was amended in 1956 to provide that not more than 50% of gross revenue could be derived from interest.
- v) Finally, in 1961, further legislation was introduced the effect of which progressively increased the restrictions imposed on investment companies qualifying under the Act.

From the above brief resume it can be seen that, since 1954, successive amendments to Section 69 of the Income Tax Act have narrowed the sphere of action of investment companies in this country. The broad freedom of choice and action they once possessed has been steadily diminished. It is mainly because of this that a number of closed-end companies with substantial portfolios no longer attempt to qualify as investment companies.

RECOMMENDATIONS WITH RESPECT TO SECTION 69

It is strongly recommended that the present provisions of Section 69 of the Act be reviewed at this time, and we urge that the conditions whereby a corporation qualifies as an investment company be reconsidered critically in the light of current economic practicalities and objectives.

In order to assist you and your staff in such a review, we respectfully submit, hereunder, our comments and proposals with respect to the actual conditions included under Section 69 (2) whereby a corporation qualifies as an "investment company." These are presented in the light of our collective experience, and reflect very real problems with which closed-end companies have had to contend over recent years.

(a) Actual
"at least 80% of its property was, throughout the year, shares, bonds, marketable securities or cash."

Comment
We do not consider this percentage to be unduly restrictive. However, the buying of short term notes by an investment company has become common as an outlet for defensive funds. Therefore, a literal interpretation of the Act might penalize a company which has been prudent or conservative during a particular year. Moreover, a literal interpretation of the word "bonds" might exclude debentures, also a common type of investment.

Proposed
That the paragraph be amended to include debentures, also short term notes.

(b) Actual
"not less than 95% of its income for the year was derived from investments mentioned in paragraph (a)."

Comment
It is the practice of a number of those closed-end companies participating in the management of corporations in which they have holdings to charge fees for such services, and these fees can exceed the 5% limit. Very often this management assistance is of vital importance to the company concerned and it is our belief the practice is beneficial and deserves encouragement.

Proposed
That the required percentage be reduced from 95% to 90%, and that management fees be excluded from the percentage.

(ba) Actual
"not less than 85% of its gross revenue for the year was from sources in Canada."

Comment

Although we appreciate the importance of stressing investment in Canadian equities, it is often impossible for the managers of closed-end companies to achieve prudent diversity in their investment portfolios without including some foreign securities. It is a demonstrable fact that shares of Canadian companies simply are not available in a number of major industries, and only on a limited scale in others. In addition, in order to share in the prosperity of foreign companies doing business in Canada and to obtain representation on their boards of directors, it is often necessary to invest in shares of the parent companies. This is particularly appropriate in the case of those companies in which there is a large scientific or technological content.

Another factor is the extreme difficulty of forecasting income with complete accuracy. It has become a habit of many corporations, both Canadian and foreign, to declare year-end extra dividends and the unexpected declaration of a sizeable extra dividend by a foreign corporation, or the omission of one by a Canadian corporation, can easily upset the anticipated income balance. The result is that closed-end fund managers must actually plan for less than 15% of income from foreign sources, as a hedge against the above possibilities.

Proposed

That the required percentage be reduced from 85% to 75%. We also submit that it would be of great assistance to permit the averaging of the income proportions over, say, three years. A further suggestion is that the regulations be changed to allow interest on non-resident loans or debentures negotiated in another country, against which only securities of that country have been bought, being charged against the relative non-resident income rather than being prorated by the Canadian tax officials between taxable and non-taxable income.

(bb)

Actual

"not more than 25% of its gross revenue for the year was from interest."

Comment

It is our recent experience that the relatively high yields of debt securities and lower yields of common equities, as compared with earlier periods, have required investment companies to hold considerably less than 25% of the former in their portfolios in order to qualify under this paragraph. Investment in preferred shares, to make up part of the fixed income proportion when a defensive position is required, is not deemed to be an entirely satisfactory alternative because of the risk element and possible short-term lack of marketability.

Attention must also be drawn to the fact that numerous occasions arise when an investment company, having sold a major equity holding and while awaiting an opportunity to reinvest the proceeds in another equity, must temporarily

place these funds to earn interest income. The timing of such sales and reinvestments, if they are to be undertaken prudently, often results in the buildup of substantial interest earnings which significantly distort the income proportions.

Furthermore, we believe that this limitation could penalize some investment companies whose policies might be aimed at developing, by way of loan investments, new innovative enterprises from which dividend income would not be expected for a number of years.

Proposed

That the limitation be increased from 25% to 35% and that the averaging of income proportions over a period of years be permitted.

(c)

Actual

"at no time in the year did more than 10% of its property consist of shares, bonds, or securities of any one corporation or debtor other than Her Majesty in the right of Canada or of a province or a Canadian municipality."

Comment

This limitation prevents a number of the largest and most effective closed-end companies from qualifying under the Act. It is felt that these companies, if provided with adequate incentives, could come closest of all vehicles in the private sector to fulfilling some of the major objectives of the Watkins Task Force.

Proposed

That the allowable percentage be increased from 10% to 25%.

(d)

Actual

"at no time in the year was the number of shareholders of the corporation less than 50, none of whom at any time in the year held more than 25% of the shares of the capital stock of the corporation."

Comment

There are no apparent advantages or disadvantages to this clause.

(e)

Actual

"an amount not less than 85% of its taxable income plus exempt income for the year (other than dividends or interest received in the form of shares, bonds or other securities that have not been sold before the end of the taxation year) minus
 (i) 21% of its taxable income for the year, and
 (ii) taxes paid in the year to other governments,
 was distributed to the shareholders before the end of the year."

Comment

Although the provisions of this paragraph are not in themselves objectionable, a problem arises because of the already mentioned impossibility of forecasting income accurately, in any year, before declaring and actually paying out the required dividends.

Proposed

That the averaging of such dividend payments over a period of years be permitted, as well as a reasonable extension beyond each year end to make a final distribution.

It has been the experience of some investment companies that, as the result of inadvertent oversights, or for reasons beyond their control, there have been occasions when they have found themselves in default with respect to one or more of the restrictive provisions of Section 69. The penalty of disqualification has usually been punitively disproportionate to the infraction. It is recommended, therefore, that in such cases an investment company be allowed a reasonable period of time to rectify the default.

OTHER RECOMMENDATIONS

The general purpose of investment is to obtain as large a return on invested capital as possible, consistent with a reasonable degree of prudence; this return includes a combination of growth of income and growth of capital. Investments are not made by a closed-end company with a view to realization of quick capital gains, but if the investment policy is properly oriented towards long-term growth, the current income received is not likely to be large.

One of the problems faced by closed-end companies is that for the most part, the only tangible benefit received by their shareholders is in the form of dividends, which depend primarily on current income. Growth of capital, as reflected in growth of net asset value per share, over the short-term, confers no benefit on the continuing shareholder of the closed-end company. As a consequence, such a shareholder must be content with what is likely to be a very gradual increase in the dividends he receives. That being so, it is small wonder that the shares of closed-end companies habitually sell at considerable discounts from net asset value. It is this discount which makes the raising of new equity capital by such companies extremely difficult, if not impossible.

This special role of closed-end companies and their resulting handicaps under present legislation, as well as some suggestions for remedial action, are outlined on pages 269, 270 and 271 of the Watkins Report.

In our submission to the Minister of Finance, dated June 23, 1967, we recommended the legislative enactment of a number of incentives to encourage equity investment in Canada, while enhancing the role of closed-end companies in the financing of new developments and the rationalization of existing enterprises. These suggestions are repeated and discussed hereunder and we are convinced that their enactment, in conjunction with the implementation of our above recommendations with respect to Section 69 of the Income Tax Act, would resolve many of the problems of closed-end companies as set forth in this present submission.

- 1) Legislation enabling qualifying investment companies to distribute net realized gains on sale of investments as tax-free dividends, thereby increasing

the flow of free funds for further equity investment on the part of individuals and permitting shareholders to obtain tangible benefits from the results of successful investment performance. In contrast with ordinary industrial companies, closed-end companies pay out such large percentages of earnings each year that their surplus accounts reflect comparatively small proportions of retained earnings.

- 2) Legislation enabling qualifying investment companies to purchase their own shares on the market out of surplus and, in some special instances, out of capital. Such a privilege would tend to increase the market stability of closed-end companies' shares. Moreover, the shares so purchased could be used eventually in payment for acquisitions, as a reserve against conversion of convertible securities, or for other corporate purposes. Reference is made to the recommendations of the Lawrence Committee and to Section 39 of the Ontario Business Corporations Act, 1968, which as Bill 125 was given first reading in May of this year. Nevertheless, we do not believe that this provision alone would completely eliminate the market discount from net asset value.
- 3) Legislation enabling qualifying investment companies to pay tax-free stock dividends. This is one of the best methods for expanding the number of shares available for Canadian equity investment, or for the retention of cash where required for expansion. A further suggestion is that such investment companies be permitted to give shareholders as extra dividends, without attracting tax, share purchase warrants entitling them to purchase common shares over a period in the future at, say, the break-up value on the date of issue of the warrants. It is believed that such a practice would tend to close the gap between the net asset value and the market value of these companies' shares.
- 4) Legislation enabling qualifying investment companies to spin off to their shareholders shares of holdings and subsidiaries, some of which are not publicly traded, as tax-free dividends. This would be an incentive to divest, thereby broadening ownership of Canadian equities and diminishing the prospects of large monopolies. The recently released study by Professor G.R. Conway, prepared for the Toronto Stock Exchange, highlights the need for increasing the "available" supply of Canadian equities for individual investors.
- 5) Legislation increasing the dividend tax credit from its present 20%, as a further incentive for Canadian investors to increase their Canadian equity investments and a further alleviation of the double taxation of equity earnings.
- 6) Legislation moderating the impact of succession duties and estate taxes. These reduce the availability of investment capital for productive employment in support of the nation's economic growth and often result in forced sales to

foreign ownership. Reference is made to the recent report of the Ontario Economic Commission on this matter.

We must express our serious concern over the fact that the apparent advantages of tax-free gifts and successions between husbands and wives, as provided in the October, 1968 Budget, will be far more than offset by the sharply higher Estate Taxes eventually payable by surviving spouses, combined with the provincial succession duties against which no credits may be allowed. It is our conviction that the end results of these added burdens can only be a reduction of available investment capital and a further discouragement of Canadian entrepreneurship.

We believe that most of the above recommendations are consistent with those of the Watkins Task Force, particularly Section V iv. 3(c) on page 405 of the Report, which states:

"Take steps to improve the position of the closed-end funds so that they will become more effective vehicles for the exercise of Canadian entrepreneurship. Such steps could include permitting the funds to buy their own stocks under certain controlled conditions, and the right, if they so elect, to declare and distribute their capital gains without special penalty."

CANADA DEVELOPMENT CORPORATION

It has been reported that the government will soon announce legislation establishing this organization. According to the Watkins Task Force:

"The Canada Development Corporation should be a catalyst to encourage private consortia."

Nevertheless, we must stress the following quotation from our submission to the Minister of Finance, dated June 23, 1967:

"If, despite all the possible pitfalls, a Government sponsored investment company were approved by Parliament, it would, in effect, be competing for the available supply of public savings with a great many Canadian investment companies of both the closed-end and open-end types. This being the case, in order to ensure that such competition is on a fair and equitable basis, we respectfully suggest that it should be subject to all the requirements which other investment companies in Canada must meet. We furthermore strongly urge that its functions and machinery should be complementary to, rather than in conflict with existing financial institutions."

It can be expected that excellent management and direction will be provided for the Canada Development Corporation. Yet, some of Canada's most able administrators and financiers have directed the affairs of numerous closed-end companies, under present legislation, without succeeding in eliminating or even significantly reducing the market discount from break-up value of their shares.

THE CARTER REPORT

Many of the questions raised in the Report of the Royal Commission on Taxation are fundamentally relevant to the matters discussed by the Watkins Task Force. It had been our intention to highlight in this present submission some of the more significant points raised in the Association's brief of October, 1967, regarding the Carter Report, addressed to Mr. Sharp. However, after seriously reviewing that document, we decided to re-submit it in its entirety herewith, as Exhibit "C."

In our said submission of last year, we explained the objections of this Association to a capital gains tax in Canada, particularly with reference to its impact on closed-end companies. On page 15 of Exhibit "C", we stressed the distinction between investment dollars and consumption dollars, which contrasts directly with the basic Carter philosophy that all dollars are the same. We also appended (pages 36 to 38 of Exhibit "C") a number of suggestions for consideration in the event that the Government should decide to implement a capital gains tax. Our final suggestion was as follows:

"Special consideration should be given to the difficult position in which the closed-end companies (including the proposed Canada Development Corporation) would find themselves if a capital gains tax is imposed. Two alternatives are proposed:

- a) Capital gains which are re-invested within a reasonable period of time would be tax-free; and
- b) The closed-end companies themselves would be free of capital gains tax, but the shareholder of such a company would be subject to a possible capital gains tax if and when he sold his shares at a profit."

CONCLUDING REMARKS

We respectfully submit that the best and perhaps only way to attain in these matters the objectives of the Government, as well as those set forth in the Watkins Report and by our own organization, is through a realistically co-ordinated approach. In this, we suggest the Government should provide the lead in formulating practical ground rules and soundly conceived legislation.

A fair balance between permitted flexibility in management decisions, adequate controls to discourage abuses and the necessary incentives to attract new capital will help closed-end investment companies to play their part even more actively in increasing Canadian ownership and control of economic activity in this country.

Respectfully submitted,

ASSOCIATION OF CANADIAN INVESTMENT COMPANIES

Henry R. Jackman
President

J.V. Emory
Vice-President

EXHIBIT "A"ASSOCIATION OF CANADIAN INVESTMENT COMPANIESQUARTERLY REPORT ON ASSET AND SHARE VALUES OF MEMBER COMPANIES

	<u>As at September 30, 1968</u>			
	Net	Break-Up	Approx.	Discount
	Assets (000)	Value Per Share	Market Value	
	\$	\$	\$	%
All-Canadian-American Investments Ltd.	779	.80	.55	31.25
Canadian & Foreign Securities Co., Ltd.	17,243	31.65	15.00	52.61
Canadian International Invest. Trust Ltd.	7,343	53.43	33.00	38.24
Central Fund of Canada Limited - "A"	1,366	14.92	9.50	36.33
Consolidated Diversified Std. Secs. Ltd. -Pfd.	1,256	104.69	40.00	61.79
Dominion & Anglo Investment Corp. Ltd.	22,293	37.80	18.00	52.38
Dominion-Scottish Investments Limited	19,650	20.33	13.375	34.19
Economic Investment Trust Limited	25,574	19.86	13.625	31.37
The Fulcrum Investment Company Ltd.	8,505	6.20	5.50	11.29
Great Britain & Canada Investment Corp.	27,418	23.51	19.00	19.18
Life Investors Limited	2,651	8.84	10.75	21.60 (Prem)
Magnum Fund Limited*	21,107	53.76	36.00	33.04
MP G Investment Corporation Ltd.**	7,334	6.60	5.25	20.45
Pacific Atlantic Canadian Invest. Corp. Ltd.	5,001	5.633	4.00	29.95
Power Corporation of Canada, Limited	230,000	17.00	12.00	29.41
Toronto and London Investment Co. Ltd.	17,203	5.12	3.625	29.10
United Corporations Limited - "B"	<u>81,474</u>	21.03	16.00	23.92
TOTAL	<u>491,189</u>			

* As at June 30, 1968

** As at July 31, 1968

EXHIBIT "B"ASSOCIATION OF CANADIAN INVESTMENT COMPANIESPERCENTAGE DISTRIBUTIONS OF COMPOSITE PORTFOLIODecember 31, 1967Geographical Distribution

Invested in Canada	82.9 %
Invested in the U. S.	13.8
Invested Overseas	3.3
	<u>100.0 %</u>

Distribution by Class of Security

Bonds, debentures, mortgages, etc.	4.7 %
Non-voting preferred shares	9.3
Common and convertible or voting preferred shares	86.0
	<u>100.0 %</u>

Distribution of Voting Equity Portfolio by
Class of Industry

Public utilities	14.1 %
General manufacturing	14.1
Banks and finance	12.7
Petroleum and pipelines	11.1
Paper and forest products	9.1
Transportation	8.1
Metals and mining	7.5
Chemical, drug and textile	4.3
Food, beverage and tobacco	3.3
Heavy industry	2.9
Merchandizing	2.4
Building materials and construction	1.3
Miscellaneous	9.1
	<u>100.0 %</u>

SUBMISSION

of the

ASSOCIATION OF CANADIAN INVESTMENT COMPANIES

to

THE HONOURABLE MITCHELL M. SHARP, P.C., M.P.,

THE MINISTER OF FINANCE

regarding

THE REPORT

of

THE ROYAL COMMISSION ON TAXATION

ASSOCIATION OF CANADIAN INVESTMENT COMPANIES MEMBERS

<u>NAME</u>	<u>APPROXIMATE NET ASSETS JUNE 30, 1967 (000)</u>
All Canadian-American Investment Limited	\$ 633
Anglo-Scandinavian Investment Corp. of Canada	17,626
Betrust Investment Corporation Ltd.	2,725
Canadian & Foreign Securities Co. , Ltd.	14,892
Canadian International Investment Trust Ltd.	6,717
Canadian Power and Paper Securities Limited	16,244
Central Fund of Canada Limited	1,020
Consolidated Diversified Standard Securities Ltd.	1,085
Dominion & Anglo Investment Corporation Limited	17,456
Dominion-Scottish Investments Limited	17,925
Economic Investment Trust Limited	23,085
The Fulcrum Investment Company, Limited	7,629
Great Britain & Canada Investment Corporation	24,727
Life Investors Limited	2,081
Magnum Fund Limited	15,663
M P G Investment Corporation Limited	7,157
Pacific Atlantic Canadian Investment Company, Ltd.	4,712
Power Corporation of Canada, Limited	164,700
Toronto and London Investment Company, Limited	14,722
United Corporations Limited	<u>72,254</u>
TOTAL	<u><u>\$433,062</u></u>

ASSOCIATION OF CANADIAN INVESTMENT COMPANIESDIRECTORS

Mr. W. A. Arbuckle	-	Director
Mr. J. V. Emory	-	Vice-President
Mr. F. M. Fell	-	Director
Mr. J. R. Jackman	-	President
Mr. L. W. Skey	-	Director
Mr. M. L. Smith	-	Director
Mr. W. I. M. Turner, Jr.	-	Director

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The Honourable Mitchell M. Sharp, P. C. , M. P. ,
Minister of Finance,
Government of Canada,
Ottawa, Ontario.

Association of Canadian Investment Companies

Submission re:

The Report of the Royal Commission on Taxation

Dear Mr. Minister,

This submission of the Association of Canadian Investment Companies, representing a group of closed-end investment companies with total assets approaching \$450 million, is written in response to your request for submissions from Canadian taxpayers on the Report of the Royal Commission on Taxation. In addition to this brief submitted on its own behalf and prepared with the assistance of Peat, Marwick, Mitchell & Co. , and certain economists, this Association also provided financial support for a brief to be submitted by The Toronto Society of Financial Analysts. Our support for the Society was entirely financial and from the financial community viewpoint. No attempt was made to influence the Society in any way in the preparation of their brief.

Introduction

This submission is not a broad endorsement or criticism of the Report of the Royal Commission on Taxation, but is directed toward subjects about which we have knowledge; principally, the subject of

SUBMISSION

of the

ASSOCIATION OF CANADIAN INVESTMENT COMPANIES

to

THE HONOURABLE MITCHELL M. SHARP, P. C., M. P.,

THE MINISTER OF FINANCE

regarding

THE REPORT

of

THE ROYAL COMMISSION ON TAXATION

October, 1967

Association of Canadian Investment
Companies,
Suite 1510, Terminal Towers,
105 Main St. East,
Hamilton, Ontario, Canada.

capital costs and returns. We offer comments on matters which affect our member corporations, the investment process and individual Canadians.

We take it as evident from the Government's actions, since publication of the Report, that it accepts the burden of proof of demonstrating that it has been properly satisfied before taking any action to implement any part of the Report, that:

1. the ultimate effects of the proposals would benefit the country as a whole;
2. the margin of benefit of the proposals over the present system of taxation would be sufficient to make the major disruptions inherent in their adoption worthwhile;
3. the consequences of these recommendations be foreseen and evaluated;
4. this revolutionary experiment in taxation can be reversed if it proves harmful to the Canadian people and economy.

The Carter Report does not, within itself, provide the Government with the means of discharging that burden of proof to the point where the Report's proposals can be accepted. We realize the problems which the Government faces by postponing a decision on Carter, in that the greater the lapse of time before action (if any is to be taken) the greater the loss of momentum generated by the Report at the outset. Also, the country meanwhile must remain in a degree of suspense. Nevertheless, in a decision as important as this, we urge you to concur in our view that it would be a far more serious mistake to act hastily in the attempt to "strike while the iron is hot", than to risk

the loss of some enthusiasm and momentum in favour of a balanced judgment after appropriate efforts to project the consequences.

We are greatly concerned with the creation and preservation of investment capital, and thus define some of its characteristics which are important to bear in mind when considering the Report. Investment capital is international; it is, when not restricted, extremely fluid; it always weighs the potential opportunities against the potential risks involved; it frightens easily; it abhors uncertainty outside of commercial risk; and, finally, investment capital is absolutely essential to the development of Canada. The uncertainties which the Carter proposals will engender will, we believe, drive investment capital away from and out of Canada.

The Investment Business:
The Function of Supplying Capital

The investment process, in theory, and usually in practice, consists of a continuous search for the highest possible rate of return on capital, within the limits of acceptable risk. The greater element of risk involved, the greater the potential return must be, if capital is to be attracted.

To this definition of the investment process must be added one practical complicating factor - taxation. Adding this factor, then, the definition of the investment process becomes "a continuous search for the highest possible rate of after-tax return on capital within the limits of acceptable risk".

A Government which alters either the after-tax rate of return on capital or the risks involved in the investment of that capital, will, whether deliberately or not, alter the flow of that capital. In our judgment, the Carter proposals certainly alter the after-tax rate of return on capital and probably alter the risk factor, if only because of the uncertainties they engender. This would result in a financial tragedy for Canada at this stage of our development by causing not only a discouragement of capital inflow, but, even worse, a flight of capital.

The Adverse Effects of Increased Costs of Borrowing
on Bond Markets, Small Businesses, Governmental
Borrowing, Housing, Financial Institutions and
Importing Capital.

Bond Markets:

As investment companies we are concerned about the cost of all capital. Bond markets throughout the world, are, at the time of writing, in trouble, and that market in Canada is certainly no exception. The erosion of the purchasing power of money over the years has made not only the professional investor, but also the man on the street increasingly reluctant to invest his money in long term bonds. As a consequence, we are rapidly approaching the point where the only real buyers of long term bonds who are left are those whose obligations can be measured strictly in terms of the monetary unit. The fact is that the relative attractiveness of long-term bonds as compared with other investment vehicles has deteriorated materially in recent years to the point where interest rates are now at their highest point in over 40 years.

The Carter proposals can only result in a further deterioration in the market for bonds and other interest bearing obligations, and hence in even higher interest rates.

Small Businesses:

There are individuals and enterprises, such as most small new businesses, which cannot generate their capital by any other way than borrowing. At a certain level of interest rates such borrowing becomes economically prohibitive.

Government Borrowing:

The adverse effect of higher interest rates on government borrowing at all levels will create obvious difficulties, and particularly onerous problems at the provincial and municipal levels, where a great deal of the money borrowed is used to provide essential public services.

Housing & Mortgages:

An even more serious effect, at least from the point of view of the individual Canadian resident, would be the effect of the Carter proposals on both the supply and cost of mortgage money. The result would almost certainly to be accentuate further what is, even under present conditions, an almost critical housing shortage.

Financial Institutions:

One final result of the implementation of the Report might not be so obvious, but is worth mentioning. The rapid rise of interest rates in recent years has already put a severe strain on some of our

financial institutions - particularly on those that receive deposits of relatively short-term from the public in one form or another and re-lend the money at comparatively long-term in the form of mortgages and consumer credit. We are strongly of the opinion that anything that would suddenly increase the interest rates paid on these deposits from their present level would prove disastrous to these institutions and result in a sizeable number of bankruptcies, with loss to the public at large and the likelihood of a spiralling series of financial crises.

Importing Capital:

Finally, we believe that it is naive to expect that a high level of interest rates in Canada would attract a greatly increased flow of foreign capital into our bond market. Apart from any consideration of our obligation to keep our exchange reserves within agreed limits, foreign governments, including that of the United States, are unlikely to permit with indifference a higher rate of capital outflow from their own countries than now exists.

Application of a Capital Gains Tax to Equity Investments.

One of the stated objectives of the Carter proposals is to make Canadian equities more attractive to Canadian residents. We question if the Report is on target.

In the case of equities, the after-tax return on capital consists of two elements which are like two pockets of the same suit. The first of these is current income received in the form of dividends. The second,

if the investment is a successful one, is capital appreciation. Under our present tax laws, dividends and capital gains as returns on invested capital are treated differently. Dividends are taxable and capital appreciation is not. The net return on capital therefore consists of the net income after taxes plus the capital appreciation free of tax and it is this total prospective net return on capital, balanced against the degree of risk involved, which determines the attractiveness of an investment.

Anything which increases the net return on capital tends to induce the prospective investor to accept a higher degree of risk and vice versa. It follows that, if for any reason one group of investors receives a higher net rate of return from the same investment (involving the same amount of risk) than does a second group, the investment will tend to move from the second group to the first.

This, in simple terms, is the danger of a capital gains tax in Canada, whether such a tax is imposed independently or within the Carter recommendations. We are, comparatively, a capital-poor country in relation to our resources, potentialities and development needs. It is an investment truism that it is easier for a wealthy investor to risk a given amount of money in a speculative enterprise than for an investor of modest means. This same principle applies to nations such as the United States and Canada. If, through imposition of a capital gains tax in Canada, the present investment balance should

be tilted in favour of the American investor, the high-growth, high-risk investment opportunities in Canada, on which a large part of our future development depends, assuredly would flow into American hands.

Much has been heard in recent years about the necessity of repatriating Canadian equities if "Canada is to maintain control of its own economic destiny". In the judgment of this Association, it is beyond our national economic power to repatriate, even during a very long period of time, the ownership of the large, well-established American subsidiaries operating in this country. Our limited capital resources would be much better employed in starting and supporting new industries (with all the risks involved) and carefully nurturing them with all possible incentives. Any taxation policy that reduced the incentives for some Canadian residents to start and for others to support new Canadian ventures, automatically reduces the amount of risk that Canadian investors are likely to be prepared to accept in these ventures. This country was built by taking risks and can only reach its full potential if the risk-takers are encouraged by the expectation of the fullest possible return on their capital.

This Association is firmly opposed to a capital gains tax in Canada. We are convinced that it would slow down the rate of development of the country and, by doing so, inhibit the growth in the standard of living of the Canadian people. It hardly seems necessary to add that all levels of government in Canada would be faced with a lower tax base

from which to meet their obligations.

Implementation of any form of capital gains tax in this country that proved to be more onerous to the Canadian investor than the American capital gains tax is to a resident of that country would, in our opinion, be little short of a national disaster. It could only ensure that the best investment opportunities in Canada, carrying as they do a high degree of risk, would flow into American hands and that the repatriation of such investments would take place (if at all) at a considerably higher price when they had become stable and relatively free of risk. This, is the unpalatable filling inside the tax-coating of the Carter pill.

We disagree with the thesis of the Report that its proposals would make Canadian equities more attractive to Canadian residents. It is our contention that it would make only certain equities more attractive, and that for Canada they would be the wrong kind of equities.

Shifting the tax impact away from income alone and on to both income and capital appreciation, would change the whole investment equation. The new factors that would be introduced would be so complicated as to be likely to freeze Canadian investors, amateur or professional, into a state of indecision and ineffectiveness for a considerable period of time until they could make some kind of sense out of the resulting chaos.

An important study prepared by Peat, Marwick, Mitchell & Co., on the effects of the Carter proposals on the net investment

return on the equities of forty major Canadian public companies is included as Appendix "A" of this submission. The probable effects of the Commission's proposals, which on the surface appear to be simple, in practice turn out to be so complex that we, a group of professional investors, have found it necessary to retain tax experts to assist us in our analysis. We are concerned by these investment complexities and the average investor will certainly be quite bewildered.

Our first general observation is that the practical effect of the Report's proposals on the relatively simple investment equation is frighteningly complex. The part in the equation played by the taxation factor under the present system of taxation would become the dominant factor under the Carter system.

The taxation factor becomes quite unpredictable under the Carter system in that the taxes to be paid by the individual investor depend on the tax policies adopted by the companies in which his money is invested and hence are beyond his direct control.

Our second general observation is that, in a good many instances, the 'wrong' investment opportunities - 'wrong' in the sense that they are likely to contribute least to the future development of Canada - become more attractive to the Canadian investor compared with his American counterpart and the 'right' investments - in the same sense - become less attractive to the Canadian investor compared with his American counterpart. The present investment balance would be

therefore completely altered and the result would be that the shares of young, vigorous, growth companies would tend to flow into American hands while the shares of older, better-established companies would tend to flow into Canadian hands. In essence then, the American investor is likely to be in a position to buy into our most promising investment situations at an early stage when modest investment is involved; hold these situations through their period of greatest growth; and sell them back to Canadians without capital gains tax to Canada when they have matured and a substantial investment is involved. This would not only fail to solve the problem of "Canada for Canadians" but would actually make it worse and bring about serious consequences for our balance of payments.

Adverse Effects of the Application of The Report's
Proposals including a Capital Gains Tax on closed-
end Investment Companies and Other Pools of
Canadian Investment Capital.

The function of an investment company is to provide for the small and large investor a diversification of holdings that otherwise might be impossible to achieve and to provide trained and specialized supervision that the average layman is usually not competent to supply on his own. In short, investment companies provide a means of indirect investment in Canadian industry.

These companies generally undertake what is judged to be a reasonable proportion of risk-potential growth investment and one responsive to calls for new equity capital. The investment company

concept of distributing risk and providing continuous surveillance is basically sound but the test is in the application of the theory. Performance depends in the last analysis on management and that is essentially what the purchaser of investment company securities is buying. The managements of the Canadian Investment Companies are resident and established in Canada and truly Canadian.

In addition to serving the individual, investment companies serve society generally by providing another conduit for the flow of savings from the saver into industry. Total net assets of open-end funds increased from \$1,056.3 million in 1962 to \$2,688.9 million in 1966. Closed-end funds increased from \$485 million in 1962 to \$760.7 million in 1966. (Source: The Financial Post 1967 Survey of Investment Funds, page 30).

Closed-end investment companies much like industrial and other business corporations have a relatively fixed amount of capital stock outstanding. The management may offer an additional block of shares but this has happened infrequently and to only a small extent, in recent years. The market price of the shares depends not only upon the market value of the underlying securities but also upon the demand and supply of the investment company shares themselves in the open market. For this reason, shares of closed-end companies may often be purchased at substantial discounts below their asset or liquidating value. The discount tends to be greater in weak markets.

and to diminish in strong markets.

The closed-end investment company chosen for the test by Peat, Marwick, Mitchell & Co. , had at the end of 1966 total net assets at book value of \$48 million (at market value the net assets were in excess of \$63 million). The Company has qualified continuously under Section 69 of the Income Tax Act. Its effective management and control is situated in Canada and is Canadian. Approximately 30% of its shares are held by non-residents.

The test was made to determine the extent to which the company's capital investments would have been reduced had the Commission's tax system been introduced immediately after the organization of the company in 1933.

The results reveal that the capital in the private sector at December 31, 1966, provided by this one investment company alone of \$48 million, would have been reduced by somewhere between \$17 to \$25 million. The capital provided to the private sector through this one company would have been approximately 50% less than it actually was under the tax system and facts that prevailed. Only 12% of the test investment company's investments at December 31, 1966 were other than Canadian equities or bonds.

There are a substantial number of non-residents who have invested in Canadian investment companies. Under the Commission's system of taxation, it would be unattractive for non-residents to invest through a Canadian investment company which is subject to a 50% tax

on capital gains realized. The non-resident would be far more likely to place his capital in an investment company resident in his own country.

Whether the company could have altered its investment practices to prevent such a disastrous infringement on its growth is subject to question. It is also questionable whether any investment company would have remained resident in Canada if it had been free to move its assets elsewhere. Investment companies usually hold a fairly diversified and balanced investment portfolio. A shift in the portfolio towards dynamic growth stocks in order to maintain the rate of growth could upset the balance dictated by good investment practices. A shift in the portfolio towards bonds or investments in static companies in order to reduce the impact of the tax on economic gain would be a move in the reverse direction and would in itself cause an impairment in growth.

The revenue presently generated is the product of a specific investment base. If that investment base is substantially reduced it would appear reasonable to assume a substantial reduction in the product thereof and ultimately a reduction in future tax revenues.

Appendix "B" demonstrates statistically what would have happened to one Canadian pool of capital over a thirty-three year period had the Carter proposals been in effect. Aside from our deep concern about the effect on a typical member company of our

Association, it is also typical of what would happen to any pool of Canadian capital, whether owned by a large number of small investors through the medium of an investment company or privately.

Dollars Differ - A Buck Is Not A Buck

We take strong issue with the basic assumption of the Carter Report that all dollars are the same. A dollar in the hands of an investor is NOT the same as a dollar in the hands of a consumer, nor is it the same as a dollar in the hands of government. We believe that there is no inequity in treating capital gains differently from income gains. A dollar invested as capital is a working, building dollar; a dollar spent on consumption is a rapidly circulating dollar representing value which is consumed or burnt up. Too small a pool of invested capital dollars results in a poor country, generating few dollars for re-investment or consumption. Too large a supply of dollars for consumption results in inflation and the erosion in value of all dollars. A system of taxation which transfers, through the government medium, large numbers of dollars out of the vital investment pool and into the consumer area will accordingly impoverish the country of its real wealth and create further unmanageable inflation.

Any form of capital gains tax can have no other effect than to reduce the size of the collective pool of capital available in Canada and hence reduce the potential production capacity of this country.

Special Circumstances Surrounding
Closed-End Investment Companies.

Firstly, a closed-end fund is a pool of investment capital in the true sense of the word, in that any proceeds received from the sale of one security, whether at a profit or a loss, are immediately re-invested in another security. The process of disinvesting is not carried out in order to achieve a liquid capital gain as such, but in order to re-invest in another and, hopefully, more productive situation. In carrying out this process, we feel that we are fulfilling a very real economic function.

Secondly, closed-end funds have no continuous inflow of new capital such as is the case in mutual funds and in recent years have been largely precluded from raising new equity capital through the issue of common shares because of the sizeable discount from net asset value at which their common shares normally trade on the market. If they were taxed on any disinvestment made at a profit, the amount of the tax paid would be a permanent loss of capital to the company, unavailable for re-investment. Under present conditions, there is no way in which the loss of that capital can be recaptured by issuing new shares, except at a considerable discount from their net asset value.

Thirdly, the closed-end fund would not only lose capital by the amount of a capital gains tax, but would also lose the income on that capital. The final result is that it would be forced, through tax considerations, not investment considerations, to avoid the process of

disinvestment and reinvestment as much as possible. Should this occur, the closed-end investment holding company would cease to perform its economic function and stagnate, and its lack of activity would result in a deterioration in the liquidity of Canadian markets which, in that respect, already leave something to be desired.

Concluding Remarks

We are deeply concerned about the future of our country and its economic growth, should the Carter recommendations be adopted, and we are firmly against any form of capital gains tax in Canada at this stage of our national development. In taking this position, we are doing so with the best interests of the country as a whole at heart and not simply from the point of view of narrow self-interest.

Despite our strong fundamental objections, should the Canadian Government decide to impose a capital gains tax, we have outlined several suggestions in Appendix "C" hereto.

We have one further practical objection to the revolutionary proposals of the Royal Commission on Taxation. Among the many accounting complications necessitated by the Report, those involved in keeping track of an investment portfolio would be appalling. While it would be difficult enough for the members of this Association, we, at least, have trained accounting staffs and the professional advice of our auditors. The difficulties for the individual Canadian citizen, however, in managing his own affairs including an investment portfolio

would, in our judgment, be insurmountable. The accounting problems involved, when added to the investment complexities more fully discussed above, would seriously jeopardize the investment climate of Canada. In our opinion, we would experience a steady and continuous flight of capital that would be disastrous for our country.

Respectfully submitted,

On behalf of the Board of Directors,

Henry R. Jackman,
President.

James V. Emory,
Vice-President.

APPENDIX "A"CONTRADICTORY EFFECTS ON THE INVESTMENT RETURNS
OF 40 SPECIFIC MAJOR CANADIAN CORPORATIONS

It is the opinion of the Association that the Commission is gravely in error in looking upon capital gains as being the same as income. This opinion is in no way modified by our reference under this sub-heading to the aggregates of the types of gains in economic power. The use of the aggregation and of the related terms adopted by the Commission are applied herein. The Tables referred to in this appendix have been prepared by applying the Commission's recommendations to the reported historical facts of 40 major public companies which represent more than one-third of the Canadian companies included in the January 15, 1966 Financial Post listing of "The 100: Ranked by Assets" and approximately 60% of the total weight assigned by the Toronto Stock Exchange to all companies used in developing its index.

The Commission assumed that an individual's gain in economic power to command goods and services, for personal use, derived through the corporate sector, would arise in equal proportions each from: (1) dividends, (2) allocated retained earnings and (3) goodwill gains. This was believed to be a conservative assumption. The assumption is that on the average two-thirds of the increase in the shareholder's economic power will have been taxed against the corporation and will be the subject of refund of tax to the individual

shareholder where his effective rate of tax was lower than the contemplated peak rate. The other one-third would be taxed at the individual's full rate.

The portion which heretofore has not been subject to tax but would be brought into tax at full personal rates without any credit actually might be as high as 96%, i. e. the portion being subjected to no tax or to a tax credit being less than 4%. This is revealed in Table 1.

A study of Table 1 on page 25 reveals that there is no pattern in the ratios between the various elements of the aggregate gain in economic power of the shareholder derived through the corporate sector. There would be remarkably few cases where the accumulation within the corporations of fully taxed retained earnings would equal or exceed the dividends actually paid out.

Further observations from Table 1 are as follows:

- (a) Where the market gain is nominal but allocated fully taxed retained earnings are significant an investor who disposes of his shares may receive a benefit of up to 50% thereof. (e. g. Canada Cement).
- (b) A capital intensive company during its developing period is not apt to generate fully taxed income for some years and consequently market gains plus accumulated dividends become taxable without the benefit of tax credits when the shares are sold (e. g. Trans-Canada Pipe Lines).

- (c) A significant change in the relative position of an investment is likely to occur when one of the key elements introduced by the proposals is substantially higher or lower than the other two elements (i. e. dividends, fully taxed retained earnings and "goodwill") a factor which occurs in approximately 75% of the companies studied.
- (d) Estimated fully taxed retained earnings for "Carter" tax purposes represent less than one-half of the actual retained earnings. In the Report significantly greater portions of fully taxed retained earnings have been employed erroneously in providing examples and estimates.
- (e) Of the companies selected, 75% fall outside the mid range of between 30 and 70% market gains. The greater the number of companies in positions somewhat removed from the mean, the greater likelihood of a major dislocation in the market place.
- (f) An investment in a static company will be in a stronger position relative to one in a dynamic growth company or to its own position at present. The reverse applies to an investment in a dynamic growth company.

Table 2 on page 28 indicates how widely the change would vary in the tax burden upon the shareholder between the present and

proposed tax systems. This depends on the particular corporation in which the investment had been made and the circumstances at time of investment and realization or deemed realization. Table 2 also indicates the tax burden against a shareholder in the same company under the identical circumstances except for residence in the United States rather than in Canada. Table 2 gives examples of Canadian companies whose U.S. shareholders would be subject to a lesser tax burden than that applicable under the Commission's recommendations against shareholders resident in Canada.

Table 2 also provides an illustration of the nature of the changing relationships under isolated comparisons as follows:

- (a) The two companies selected from the grouping which experienced market price increases of less than 30% over the seven year period (static performance in the market place) are from the pulp and paper industry. The shares of both companies experienced comparable increase in price. The return on an investment in Abitibi would be up to 20% greater compared to an investment in Domtar under the proposed system.
- (b) A return on an investment in Union Gas is more than three times the return for an investment in Abitibi under the present system. Under the proposed system that differential was cut in half.

(Is there any reason why an investment in Abitibi should be made relatively twice as favourable as one in Union Gas?)

- (c) The relative position of the investments in the two companies selected from the grouping with share gains of between 30 and 70% is just about completely reversed in relationship to each other.
- (d) An investment in Canadian Tire would be made relatively more attractive than one in Union Gas.
- (e) The proposed system would have changed a loss under the present system into a small gain with respect to an investment in Dominion Steel & Coal.
- (f) The relative position of an investment in Oshawa Wholesalers is substantially changed. And not for the better.

Investors in equities do not invest in averages. They invest in the shares of specific corporations. The foregoing reveals that under the Commission's recommendations the change in the tax burden from the present system would vary to widely different degrees depending upon the anticipated outcome in each contemplated specific investment. The tax factors that would have to be weighed by the prospective investor considering any particular investment would be very much more complex than it is under the present system or under the system in the U.S. A. or the United Kingdom.

We deduce from the foregoing that many investment decisions would have been substantially different had the Commission's system of taxation prevailed over the past seven years.

TABLE 1

Study for The Association of Canadian Investment Companies
Analysis of Certain Per Share Historical Results After the Hypothetical Application
of the "Carter" Recommendations for Major Public Companies

Accumulated for Seven Financial Periods 1960 - 1966

	Ranked by market price increase ratio	Actual accumulated dividends for the period	Hypothetical increase in fully taxed retained earnings for "Carter" tax purposes for the period	Hypothetical accumulated "goodwill" gains for "Carter" tax pur- poses for the period	Actual market gains for the period	Actual increase in retained earnings for the period
Investments which experienced a market price increase of less than 30%	%	\$	\$	\$	\$	\$
Dominion Steel & Coal	(42.3)	2.80	1.13	(7.51)	(6.38)	.80
Fraser Cos.	(16.8)	9.40	(1.13)	(3.50)	(4.63)	1.48
Price Bros.	(14.9)	4.77	.01	(2.22)	(2.21)	2.40
Consolidated Paper	(7.3)	14.40	(.34)	(2.77)	(3.11)	4.97
Anglo Canada Pulp & Paper	(2.2)	3.67	3.16	(3.38)	(.22)	3.66
Canada Cement	NIL	8.50	11.57	(11.57)	NIL	13.68
Alcan Aluminium	1.6	4.91	3.60	(3.10)	.50	1.50
Steel Co. of Canada	3.8	5.14	(.09)	.87	.78	5.74
Canadian Industries	5.7	4.05	1.45	(.52)	.93	1.28
Trans-Canada Pipe Lines	7.3	3.00	(3.00)	4.80	1.80	1.93
Abitibi Paper	11.4	3.56	1.44	(.43)	1.11	2.60
Dominar	11.4	5.70	(.45)	2.20	1.75	3.11
Bell Telephone	11.8	15.63	3.56	1.51	5.07	3.11
MacLaren Pulp & Paper	21.0	7.46	3.43	1.69	4.12	1.38
Algoma Steel Corp.	27.8	5.35	1.09	4.22	5.11	1.66
		<u>98.34</u>	<u>25.43</u>	<u>(20.61)</u>	<u>4.82</u>	<u>72.02</u>
Investments which experienced a market price increase of between 30 and 70%						
Hudson Bay M. & S.	31.8	23.55	(2.84)	18.96	16.12	3.99
Can. & Dominion Sugar	34.9	6.75	4.89	4.89	5.37	5.73
Dominion Stores	43.7	3.04	4.45	2.85	7.30	3.97
MacMillan Bloedel	46.0	6.25	3.09	4.80	7.89	1.91
Columbia Cellulose	46.0	.60	NIL	1.77	1.77	1.34
Du Pont of Canada	46.6	5.80	3.99	7.76	11.75	1.27
Interprovincial Pipe	52.3	22.20	4.97	25.41	30.38	4.20
Canada Packers	53.4	13.15	24.08	4.73	28.81	21.27
Southern Press	60.1	7.15	3.87	8.70	12.57	1.67
Dominion Foundry & Steel	66.7	<u>3.18</u>	<u>1.97</u>	<u>6.17</u>	<u>8.14</u>	<u>5.52</u>
		<u>91.67</u>	<u>44.06</u>	<u>86.04</u>	<u>130.10</u>	<u>70.07</u>
Investments which experienced a market price increase of more than 70%						
Cominco	70.5	9.60	NIL	13.69	13.69	6.00
B. C. Forest Products	72.0	4.98	(.48)	9.48	9.00	3.28
Great Lakes Paper	72.8	5.56	(.19)	10.09	9.90	1.03
Simpsons	77.9	3.22	3.41	9.15	12.56	3.68
International Nickel	84.1	15.87	.49	42.08	42.57	16.17
George Weston	84.3	2.91	2.60	6.72	9.32	3.98
Union Gas Co. of Can.	99.3	3.78	.96	15.36	16.32	2.35
Canadian Tire Corp.	105.9	.98	4.28	3.85	8.13	4.11
Moore Corp. Note 4	119.0	7.67	NIL	49.38	49.38	14.17
St. Lawrence Cement	122.6	3.20	3.25	12.31	15.56	1.32
Noranda	132.0	9.47	NIL	30.72	30.72	5.76
Dominion Textiles	237.7	6.75	7.13	18.56	25.69	7.17
Anthes Imperial	386.8	2.23	5.05	12.28	17.33	4.91
Velcro Limited	519.3	.06	.63	18.85	19.48	.85
Oshawa Wholesalers	1510.8	<u>.80</u>	<u>3.43</u>	<u>23.01</u>	<u>26.44</u>	<u>3.33</u>
		<u>77.08</u>	<u>30.56</u>	<u>275.53</u>	<u>306.09</u>	<u>83.41</u>
		<u>267.09</u>	<u>100.05</u>	<u>340.96</u>	<u>441.01</u>	<u>225.40</u>

Study for The Association of Canadian Investment CompaniesNotes to Study of Analysis of Certain Per Share Historical
Results after the Hypothetical Application
of the "Carter" Recommendations for Major Public CompaniesTable 1

1. All amounts expressed in Table 1 are per share aggregate amounts for the seven financial periods covered in the study.
2. The Hypothetical increase in retained earnings for "Carter" tax purposes for the period represents the excess of estimated "Carter" fully taxed earnings over dividends actually paid. The bracketed figures reveal the amount by which fully taxed earnings would have been deficient in covering the dividend payouts.
3. Fully taxed earnings as they would have been under Carter have been estimated from an analysis of published financial reports and represent the aggregate of:
 - (a) that portion of the reported income subject to corporate income taxes that would have been fully covered (at a 50% rate) by the taxes reported in the official statements as currently exigible less the latter;
 - (b) where applicable that portion of estimated exempt "incentive" income upon which additional corporate tax would have been required to be paid under Carter in order to cover historical dividend payouts less the tax;

(c) estimated dividend income from other Canadian corporations.

4. With respect to Moore Corporation Limited, it was not found possible to distinguish between domestic and foreign operations. It is estimated that part of the historic dividend payout would have been from earnings generated from foreign operations. As additional tax would have been paid by the company on the latter under Carter, it is estimated that fully taxed earnings would equal dividends (i. e. no retained taxed earnings).
5. "Goodwill" gains as they would have been under Carter reflect the complete allocation of fully taxed retained earnings and a return of capital in those instances where fully taxed earnings were deficient in covering dividend payouts (i. e. the actual market gains for the period were decreased by the former and increased by the latter).
6. Actual market gains for the period represent the increase or (decrease) as the case may be between the average of the high and low market price during the first month subsequent to the beginning and end of the seven financial periods 1960 - 1966.

Study for The Association of Canadian Investment Companies

Common Size Analysis of Return on Investments in Selected Companies Before and After Personal Income Tax Under the Present System of Taxation and After a Hypothetical Application of "Carter" Recommendations

Accumulated for seven financial periods, 1960 - 1966

Investments which experienced a market price increase of -	From 30% to 70%					Over 70%		Highest
	Lowest	Less than 30%		Inter-provincial Pipe Lines		Union Gas	Canadian Tire	
Company -	Dominion Steel and Coal	Domtar	Abitibi					Oshawa Wholesalers
Market price at beginning of period	\$15.00	\$15.31	\$9.76	\$58.12	\$53.94	\$16.43	\$7.68	\$1.75
Common Size								
Market price at beginning of period	100%	100%	100%	100%	100%	100%	100%	100%
Optimum cash realization to a tax-exempt recipient:								
Present System	(24)	49	48	90	78	122	119	1556
Proposed System Note 4	2	83	98	137	147	151	187	1798
After tax return to a tax-paying recipient:								
Present System	(30)	36	35	77	69	114	114	1540
(marginal individual rate 55%*)								
Proposed System	1	42	50	69	74	76	94	899
(marginal individual rate 50%*)								
Supplementary								
After tax return under either system to an investor resident in the United States (marginal rate of U.S. tax 45%*)	(23)	29	29	62	55	90	89	1240

Table 2

* comparable marginal rates under respective systems (see Note 5)

Study for The Association of Canadian Investment CompaniesNotes to Common Size Analysis of Return on
Investments in Selected Companies (Table 2)

1. The companies used in Table 2 have been selected from Table 1, in which certain per share comparisons have been made for forty companies. The information in Table 1 has been used in developing the figures expressed in Table 2. In addition to the companies in Table 1 whose shares ranked lowest and highest in their performance in the market place two companies were selected from each of the three groupings shown. An attempt was made to select from each grouping two companies whose shares had experienced somewhat similar treatment in the market place.
2. The figures are presented in common size (i. e. as a per cent to the market price at the beginning of the period) to provide a means of more readily comparing the results of one company with another.
3. The figures reflect cumulative effects on an investment over a seven year period assuming purchase at the beginning and sale at the end of the period and an accumulation of all other factors for seven years.
4. The optimum cash realization to a tax exempt recipient under the proposed system includes the cash refunds of tax deemed to have been withheld at the corporate level in addition to the accumulated dividends and market gains realized.
5. The marginal rates at the individual's level of:

Present Canadian System

55%

Proposed "Carter" System	50%
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United States System	45%
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were used in developing the information in Table 2 and are comparable marginal rates under the respective systems for an individual whose taxable income under the present system slightly exceeds \$40,000.

(Reference: Carter Report - vol. 6, page 274 and vol. 3, pages 624-625).

It is expected that the investors from that level up exercise a significant influence in the market place.

APPENDIX "B"THE ADVERSE EFFECT OF THE REPORTS PROPOSALS
ON A MAJOR CLOSED-END CANADIAN INVESTMENT
COMPANY - A RETROACTIVE STUDY SINCE INCORPORATION.

Tables 3 and 4 that follow reveal that the capital in the private sector at December 31, 1966, provided by United Corporations Limited alone of \$48 million, would have been reduced by somewhere between \$17 and \$25 million. The capital provided to the private sector by this one company would have been approximately 50% less than it actually was under the tax system and facts that prevailed.

Table 3.

Study for The Association of Canadian Investment CompaniesEffect on Shareholders' Equity of the Hypothetical Application of
"Carter" Recommendations to a Major Closed End Investment FundFor the period from its inception in 1933 to the end of 1966

		Adjusted shareholders' equity end of period after hypothetical application of "Carter" recommendations under two alternatives			
	<u>Actual shareholders' equity end of period</u>	<u>Allocation available as estimated in Report</u>	<u>% of actual</u>	<u>No allocation available</u>	<u>% of actual</u>
Accumulated for the period:					
1933 -- 1936	\$ 3,372,000	\$ 2,411,000	71.7	\$ 1,749,000	51.9
1933 -- 1941	4,900,000	3,357,000	68.5	2,358,000	48.1
1933 -- 1946	7,412,000	4,850,000	65.4	3,268,000	44.1
1933 -- 1951	10,485,000	6,404,000	61.1	4,087,000	39.0
1933 -- 1956	18,120,000	10,009,000	55.2	5,933,000	32.7
1933 -- 1961	33,310,000	21,434,000	64.3	15,815,000	47.5
1933 -- 1966	48,281,000	30,875,000	63.9	22,767,000	47.2

See accompanying Notes

Table 4

Study for The Association of Canadian Investment CompaniesEffect on Shareholders' Equity of the Hypothetical Application of
"Carter" Recommendations to a Major Closed End Investment FundFor the period from its inception in 1933 to the end of 1966

	<u>Actual shareholders' equity end of period</u>	<u>Accumulated hypothetical additional tax to end of period</u>	<u>Accumulated hypothetical decrease in gains resulting from hypothetical decrease in investment base</u>	<u>Adjusted shareholders' equity end of period after hypothetical application of "Carter" recommendation</u>
Allocations available as estimated in Report				
1933 -- 1936	3,372,000	832,000	129,000	2,411,000
1933 -- 1941	4,900,000	1,185,000	358,000	3,357,000
1933 -- 1946	7,412,000	1,715,000	847,000	4,850,000
1933 -- 1951	10,485,000	2,353,000	1,728,000	6,404,000
1933 -- 1956	18,120,000	3,789,000	4,322,000	10,009,000
1933 -- 1961	33,310,000	5,046,000	6,830,000	21,434,000
1933 -- 1966	48,281,000	7,070,000	10,336,000	30,875,000
No allocation available				
1933 -- 1936	3,372,000	1,401,000	222,000	1,749,000
1933 -- 1941	4,900,000	1,937,000	605,000	2,358,000
1933 -- 1946	7,412,000	2,734,000	1,410,000	3,268,000
1933 -- 1951	10,485,000	3,582,000	2,816,000	4,087,000
1933 -- 1956	18,120,000	5,379,000	6,808,000	5,933,000
1933 -- 1961	33,310,000	6,952,000	10,543,000	15,815,000
1933 -- 1966	48,281,000	9,789,000	15,725,000	22,767,000

See accompanying Notes

Study for The Association of Canadian Investment CompaniesNotes to Study on Effect on Shareholders' Equity of the Hypothetical Application of "Carter" Recommendations to a Major Closed End Investment FundNOTES:

1. United Corporations Limited, the company selected for this study ranks among the larger Funds and controls approximately 9% of the total net assets of those companies which have been classified as Closed-End Funds in the Financial Post's 1967 Survey of Investment Funds.
2. The "Carter" recommendations were applied to gains realized from investment transactions over the period from its inception in 1933 to the end of 1966.
3. No attempt was made to measure the additional impairment to the growth of the company from the application of the "Carter" recommendations to income transactions or miscellaneous items included by the company in surplus arising from realized gains. Neither element would materially distort the results expressed in this study. The former because a substantial portion of all income is paid out annually to shareholders. The accumulated balance of surplus arising on revenue account at December 31, 1966 amounted to approximately \$1 million representing less than 5% of the revenue income to that date. The miscellaneous items, because the aggregate net thereof at \$149,000, are also relatively immaterial.
4. The company estimates that approximately 15% of all gains realized would have resulted from foreign investments. That percentage was used where a distinction was necessary.
5. The alternatives:
 - (a) assuming allocations available as estimated in Report -- Report, vol. 4, page 40: "...It is reasonable to assume that dividends accounted for

about one third of this return, share gains resulting from retained earnings accounted for another one third, that is, that dividends averaged one half of net profits, and the remaining one third arose from what might be called a "goodwill" capital gain 18/. The period covered by the study included the depression of the 1930's and the post-World War II experience; if the postwar period alone were considered, the return would be substantially higher and the proportion of the total gain arising from goodwill gains would be substantially greater. . . ." (it is to be noted that the foregoing assumption is not borne out by Table 1 to this Submission) and

(b) assuming no allocations available

were computed on the same basis except that under the former one-half of the gains realized from Canadian investments were assumed to have been offset by adjustments to the cost of the investments as a result of allocations and therefore not subject to tax while under the latter all gains were assumed to be subject to tax.

6. As suggested in the Report a 50% tax rate was used.
7. The decrease in the gains realized was computed by applying the ratio of the actual gains realized each year to the average of the beginning and end of that year's balance sheet amounts of the cost of investments to the amount by which the investment base would have been reduced (i. e. the aggregate of the accumulated hypothetical tax and the accumulated decrease in the gains realized for all prior years). The hypothetical tax was computed by applying the "Carter" recommendations to the reduced amount of the decreased gains which would have been realized.

APPENDIX "C"Vital Suggestions Should The Government Decide to Implement A
Capital Gains Tax - To Which We are Opposed

1. Under no circumstances should any form of capital gains tax imposed in Canada be more onerous than that in effect in the United States. We feel strongly that any Canadian tax should be considerably less onerous.
2. Full cognizance should be taken of the fact that investment dollars and consumption dollars are NOT the same thing and that, as a consequence, the point of taxation should be at the moment that the investment dollar is diverted into the consumption stream. Should the proceeds of a disinvestment which has resulted in a realized capital gain be reinvested within a reasonable period of time, the capital gain involved should be free of tax. If, however, capital gain resulting from a disinvestment is used for purposes of consumption, it might be taxed at that time.
3. While we cannot estimate the administrative problems involved, it might be possible to work out something along the following lines:
 - a) Capital gains which are reinvested within a reasonable period of time are tax-free.

Proof of reinvestment of some kind would obviously be required as would a definition of 'reinvestment' (to apply it simply to investment

in securities would be too narrow a definition - a house is an investment, capital equipment is an investment, etc).

- b) Capital gains which are diverted to consumption (again as defined) are tabled at a special capital gains rate (less than that in the U.S. A.) in the taxation year in which the diversion takes place.
- c) The rate of capital gains tax should be lower for long-term capital appreciation than for short term trading profits (less than six months?).
- d) An inflation factor should be taken into account in the case of long-term capital appreciation.
- e) Perhaps the administrative problems involved in the above suggestions could be solved by making each taxpayer fill out in each year a simple form of source and application of capital funds statement in addition to his normal statement of income. If this source and application of capital funds statement showed a net outflow of capital funds in any given year, the outflow would be taxed at the appropriate capital gains tax rate.

4. Special consideration should be given to the difficult position in which the closed-end funds (including the proposed Canada Development Corporation) would find themselves.

There are two alternatives:

- a) The suggestion made in para. 3-a) would automatically solve the problem;
- b) The closed-end fund (which would have to be defined in some way) would itself be free of capital gains tax but the shareholder of such a fund would subject himself to possible capital gains tax if and when he sold his shares at a profit.

APPENDIX "D"

Submission by
Massey-Ferguson Limited
to the
Canadian Senate Banking and Commerce Committee
on
Bill S-17 - Investment Companies Act

Introduction

We have studied the provisions of The Investment Companies Act - Bill S-17 - and we have read the Hansard report on the Senate Debates of November 21 and November 26, 1968. We strongly support the arguments put forward by the Honourable Senator Phillips on November 26 and we particularly feel that this Bill should be revised in a manner that will exclude industrial holding companies such as Massey-Ferguson Limited.

Massey-Ferguson Limited

Massey-Ferguson Limited is a company incorporated under the laws of Canada. It is a holding company having a major equity interest in 41 active subsidiary companies and a minority equity interest in 5 associate companies. These are located in 19 countries including Argentina, Australia, Brazil, Canada, Eire, France, Germany, India, Italy, Mexico, Morocco, the Netherland Antilles, Panama, South Africa, Spain, Switzerland, Rhodesia, United Kingdom and the United States.

The primary function of these companies is the manufacture, sale or distribution of one or more of the following - farm machinery, industrial and construction machinery, diesel and gasoline engines, lawn and garden equipment, trucks and office furniture. The shares of Massey-Ferguson Limited are listed on the Toronto, Montreal, Vancouver, New York and London Stock Exchanges.

For your further information, the Annual Report of Massey-Ferguson Limited and its consolidated subsidiaries for fiscal 1967 is attached hereto. The 1968 Annual Report will be available after it is mailed to shareholders on January 30, 1969.

In Canada, Massey-Ferguson Limited's principal Canadian subsidiary is Massey-Ferguson Industries Limited, an Ontario corporation. Massey-Ferguson Industries Limited and its subsidiaries are actively engaged in Canada in the manufacture and/or sale of farm machinery, industrial and construction machinery, garden tractors, snowmobiles and office furniture. One of Massey-Ferguson Industries Limited's subsidiaries is Massey-Ferguson Finance Company of Canada Limited, an Ontario corporation, which presently is engaged in the acceptance and assignment of retail instalment sales contracts from franchised Massey-Ferguson machinery dealers or retailers in all provinces of Canada.

Apparent Objectives of Bill S-17

The immediate objective of Bill S-17 as pronounced by The Honourable Senator Paul Desruisseaux and reported in the Senate Debates of November 21, 1968 was that there appeared a necessity for legislation primarily to control and regulate finance and acceptance companies, prompted by recent financial collapses of this type of company. Indeed legislation in some form to regulate this type of company may be warranted to "... secure the establishment and maintenance of a sound financial structure" (Section 22). However section 2 of the Bill then proceeds to include in ambit of the proposed legislation not only finance and acceptance companies which are primarily engaged in the purchase, discount and sale of chattel paper or bills of exchange where the dominant asset is receivables, but any federally incorporated company that -

- (1) borrows money, whether publicly or privately; whether in large amounts or small in relation to its equity; whether for a short or long term, and
- (2) uses at least 25% of the assets of the company for the purchase of bonds, debentures, notes or other evidences of indebtedness or shares of corporations.

The Bill in subsequent sections then proceeds to vest sweeping discretionary powers with the Minister and the federal department designated to administer the Act in areas of granting and revoking exemptions, reporting, filing and information requirements, inspections and examinations of company books, records and documents, loan prohibitions, certificates of registry, assessments and other matters. These provisions appear to assume the character of both securities type legislation enacted by some provinces and company law statutes.

Herein perhaps is the crux of the problem. Apart from the constitutionality aspect of this Bill, -

Is the basic purpose of the Bill the requirement upon the company to properly disclose its affairs to prospective investors who are considering public offerings of the company?

Is the Bill intended to cover parent companies who publish consolidated or unconsolidated annual reports?

Is the Bill to protect the company's public lenders or private lenders (banks and other lending institutions)?

Is the Bill to protect the company's shareholders and other general creditors?

Is the Bill intended to substantially replace the present Companies Act?

Is the Bill intended to be an intrusive instrument whereby government will dictate the company's frequent operational decisions?

Is the Bill intended to include industrial corporations, notwithstanding that the traditional requirements and customs of the financial community demand a substantially higher equity to debt ratio for finance or acceptance companies?

Is the Bill intended to include all these items?

A reading of the Bill could support an affirmative answer to all of these questions. But this raises the issue whether the precise objectives, purposes and justifications were clearly defined before drafting Bill S-17. Certainly the only definitively stated objective of the Bill is the regulation of finance and acceptance companies.

Objections

Massey-Ferguson Limited believes Bill S-17 as introduced would regulate by discretionary order and fiat with possible severity, not only finance or acceptance companies, but also industrial holding companies like Massey-Ferguson Limited.

There may have been a showing of abuse which demands further regulation of the finance or acceptance companies in addition to existing statutory laws in view of the collapse of two such companies. However, where is the showing of abuse or demonstrated necessity which demands regulation in the broad form of Bill S-17 to industrial holding companies whose operations fall within an "Investment Company" as defined in the Bill? In effect Bill S-17 in its present form is using a cannon where a rifle shot will suffice.

It is recognized that Section 3 of the Bill provides for the granting of exemptions by the Minister responsible under the Act in his discretion, particularly where the business of investment is incidental to the principal business carried on by the company. An argument could be made by companies like Massey-Ferguson Limited that the liberal interpretation of what is incidental could result in the granting of an exemption to that company by the Minister. Thus holding companies like Massey-Ferguson which publish annual reports on a consolidated basis leave no doubt from an accounting and an investors standpoint that the principal business of the Massey-Ferguson organization is that of a manufacturer and marketer of machinery and engines, notwithstanding that the legal form of Massey-Ferguson Limited is that of a holding company whose principal assets are the share capital of its wholly-owned, associate or affiliated companies who perform the manufacturing, marketing and distributing functions within their applicable national markets. The real question however is whether industrial holding companies like Massey-Ferguson should be subjected to the discretionary

exemption procedure provided by the Bill. Certainly it would be more proper to limit, in the first place, the definition of "investment company" or "business of investment" in order not to encompass industrial holding companies' operations like Massey-Ferguson Limited.

One prerequisite of carrying on the "business of investment" under the Bill is that the company borrows money. The following is a specific example which illustrates the clear irrationality of concept as manifested by the Bill's definition section. The attached unconsolidated balance sheet of Massey-Ferguson Limited (Attachment II) shows the shareholders equity was in excess of \$437,000,000 at October 31, 1967. However, Massey Ferguson Limited also had a short-term bank loan of \$8,592,000 covered by demand note and had the bulk of its assets invested in subsidiary companies and therefore is an investment company under the provisions of Bill S-17 as currently drafted.

Massey-Ferguson Limited believes the basic approach of the Bill which is to include many companies and then embark on a system of granting exemptions is costly and unnecessary. To establish or increase a governmental department to administer an Investment Companies Act on such a broad basis increases the manpower and administrative costs of the government at a time when the government has announced its program of reducing governmental expenses. The inflationary effect cannot be justified particularly where many of the companies presently included do not fall within the category of finance and acceptance companies which are the target of the Bill.

The demands of government on the financial business community as well as the public could be served in a far more advantageous and effective manner by limiting the provisions of the Bill to the basic abuses involving finance or acceptance companies which have been stated to be the objectives of the new legislation.

Recommendations

To achieve the desired objective of excluding industrial holding companies like Massey-Ferguson Limited from the provisions of Bill S-17 it is recommended that section 2 be amended to specifically exempt industrial holding companies from the definitions of the "business of investment" or "Investment Company". An industrial holding company could be characterized as a company of which the majority of its consolidated assets are represented by assets of directly or indirectly controlled subsidiary corporations, which are primarily engaged in the business of manufacture, extraction, production, processing, sale and service of, or trading in products and commodities and the financing thereof.

All of which is respectfully submitted by Massey-Ferguson Limited.

January 27, 1969.

APPENDIX "E"



THE CANADIAN CHAMBER OF COMMERCE

1080 Beaver Hall Hill, Montreal 128, Quebec

OFFICE OF THE VICE-CHAIRMAN
OF THE EXECUTIVE

February 25, 1969

The Honourable Senator Salter A. Hayden, LL.D., Q.C.,
Chairman,
Banking and Commerce Committee,
The Senate,
Ottawa, Canada.

Dear Sir:

The Executive Council of The Canadian Chamber of Commerce is most appreciative of this opportunity to address your Committee regarding Bill S-17, an Act respecting Investment Companies and wishes to bring to the attention of your Committee two important points on general principles which are in the overall interest of business.

While the Council is of the view that Bill S-17 has been drafted in an attempt to develop legislation for the ultimate protection of Canadian investors, we are convinced, nevertheless, that the definitions adopted of "investment companies" and "business of investment" are far too broad in scope and will have the effect of bringing within the scope of the Act basically operating companies and others for whom the lending and borrowing of money is incidental, although vital, to their normal operation. We urge your Committee to carefully review the Bill in this regard since obviously such legislation would have a deleterious effect upon companies making future investments in Canada.

A second principle of concern to the Executive Council arises out of those provisions of the Bill which give the Minister broad discretionary powers in defining an Investment Company as well as in the making of regulations to control the corporate practices of Investment Companies. The Canadian Chamber has since 1963 reiterated policy opposing the ministerial discretion given to the Minister of National Revenue concerning the imposition of tax related to transactions involving corporations and opposes generally ministerial discretion which affect the substantive rights of citizens. The Council is of the view that a considerable amount

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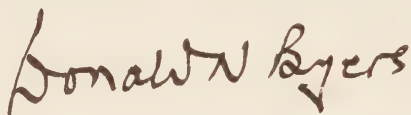
THE CANADIAN CHAMBER OF COMMERCE

The Honourable Senator Salter A. Hayden, LL.D., Q.C.,
February 25, 1969,
Page 2.

of ministerial discretion is creeping into legislation and particularly into Bill S-17. It is felt that wherever possible matters of definition and regulations should be covered by the Act itself. In other words, the Act should be written to stand on its own with the minimum of ministerial discretion permitted.

We would urge that the foregoing principles be given full consideration by your Committee and would request that these views be made part of the printed Proceedings of the Committee.

Yours sincerely,

A handwritten signature in dark ink, reading "Donald N. Byers". The signature is written in a cursive, slightly slanted style.

Donald N. Byers, Q.C.,
Vice-Chairman of the
Executive Council.

DNB:11



First Session—Twenty-eighth Parliament

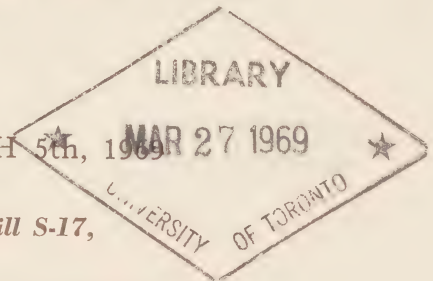
1968-69

THE SENATE OF CANADA
PROCEEDINGS
OF THE
SENATE COMMITTEE
ON
BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 22

WEDNESDAY, MARCH 5th, 1969



Fifth Proceedings on Bill S-17,
intituled:

"An Act respecting Investment Companies"

ORGANIZATIONS REPRESENTED:

Molson Industries Limited; The Board of Trade of Metropolitan Toronto; The Federated Council of Sales Finance Companies.

APPENDICES:

- "F"— Brief submitted by Molson Industries Limited.
- "G"— Brief submitted by The Board of Trade of Metropolitan Toronto.
- "H"— Brief submitted by The Federated Council of Sales Finance Companies.
- "I"— Letter from George Weston Limited.
- "J"— Letter from Imperial Tobacco Company of Canada Limited.

THE SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Lang
Aseltine	Desruisseaux	Leonard
Beaubien	Gelinas	Macnaughton
Benidickson	Giguère	Molson
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Inman	Welch
Connolly (<i>Ottawa West</i>)	Isnor	White
Cook	Kinley	Willis—(30)

Ex officio members: Flynn and Martin

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, January 22nd, 1969:

“Pursuant to Order, the Senate resumed the debate on the motion of the Honourable Senator Desruisseaux, seconded by the Honourable Senator Sparrow, for second reading of the Bill S-17, intituled: “An Act respecting Investment Companies”.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Desruisseaux moved, seconded by the Honourable Senator Sparrow, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative”.

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

Wednesday, March 5th, 1969.
(23)

At 9.30 a.m. this day the Senate Committee on Banking, Trade and Commerce *resumed* consideration of Bill S-17, "An Act respecting Investment Companies".

Present: The Honourable Senators Hayden (Chairman), Aseltine, Beaubien, Benidickson, Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Flynn, Gelinas, Giguere, Haig, Hollett, Inman, Isnor, Kinley and Savoie. (20)

Present, but not of the Committee: The Honourable Senators McLean, Phillips (*Rigaud*), Prowse and Smith.

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The following witnesses were heard:

MOLSON INDUSTRIES LIMITED:

Morgan McCammon Q.C., Senior Vice-President, Corporate Services.

THE BOARD OF TRADE OF METROPOLITAN TORONTO:

W. S. Walton, Q.C., Chairman, Corporation Legislation Committee.

THE FEDERATED COUNCIL OF SALES FINANCE COMPANIES:

K. H. MacDonald, President.

J. D. Johnstone, member of Legislative Committee.

It was agreed that the briefs submitted by the above organizations be printed as Appendices "F", "G" and "H", to these proceedings.

It was further agreed that letters received from George Weston Limited and Imperial Tobacco Company of Canada Limited be printed as Appendices "I" and "J" respectively.

At 11.10 a.m. the Committee adjourned consideration of the said Bill until Wednesday, March 12th, 1969, and proceeded to the next order of business.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

THE SENATE

COMMITTEE ON BANKING, TRADE AND COMMERCE

EVIDENCE

Wednesday, March 5, 1969.

The Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-17, respecting Investment Companies, met this day at 9.30 a.m. to give further consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: This morning we continue with Bill S-17 in our hearing of submissions. Today we have three different groups before us: Molson Industries Limited, the Board of Trade of Metropolitan Toronto, and the Federated Council of Sales Finance Companies. When we have heard these submissions we will take up Bill S-29, on which there is one group here to make representations. We may then have to adjourn our consideration of Bill S-29 because the deputy minister is away for this week. We can make that decision after we have heard the representations.

For Molson Industries Limited I believe Mr. McCammon, Senior Vice-President, Corporate Services, will make the presentation.

Mr. Morgan McCammon, Q.C., Senior Vice-President, Corporate Services, Molson Industries Limited: Mr. Chairman, I have with me Mr. A. G. McCaughey, our Senior Vice-President, Finance, and Mr. Kenneth A. F. Gates, our Vice-President, Law.

The Chairman: Are you making an oral presentation?

Mr. McCammon: Yes, I propose to make a presentation to the committee, if I may. We have filed a formal and somewhat lengthy brief. It is our intention now to present a summary of what we consider to be the salient points in that brief.

Molson Industries Limited, or "Molson" as I shall hereafter call it, is the company which was formerly named Molson Breweries Limited, and it is incorporated under the Canada Corporations Act. Since 1954, when the company consisted of virtually only one plant in Montreal, it has grown to a multi-national, multi-product organization producing and marketing its products in Canada, the United States,

Mexico and Europe through approximately 200 plant, warehouse and sales office locations. It has approximately 7,500 employees and is owned by over 12,000 shareholders. Molson is actively engaged, either directly or indirectly, through a total of 56 controlled subsidiaries and affiliates, in the management of these diversified operations, and its shares are listed on the Montreal, Toronto and Vancouver Stock Exchanges.

As we think is generally well-known, Molson has accelerated its diversification and expansionary activities, the most prominent example of which is Molson's recent acquisition of Anthes Imperial Limited, itself a highly diversified company. It is perhaps worth noting at this stage that Molson has no debt. Molson's corporate objectives, simply stated, are to continue as a broadly diversified but fully integrated manufacturing and commercial organization and, through the expansion of present operations and the planned entry into other industries, to achieve higher than normal rates of growth.

In making this submission and our statement today, we wish to emphasize that we do not question the broad laudatory intent of the bill, for we are, as a matter of corporate policy, in favour of legislation which has for its purpose the overall protection of the investing public. However, having said this, and having regard to the principles laid down in the Watkins Report concerning the economic and financial development of Canadian companies, and the principles enunciated by the Porter Commission concerning undue control and supervision of Canadian financial institutions, we must say that we share the concern publicly expressed in many quarters concerning the extremely broad scope of this legislation, coupled with the virtually unlimited discretionary powers which it confers.

We are also concerned with the approach taken in writing the bill, namely the adoption of the principle that government policy may be proclaimed by regulation rather than by legislation, contrary to, in our opinion, the sound principles set out in the McRuer Report. We feel that the former approach can only produce uncertainty and, hence, a climate which hinders proper business expansion and investment development. It is generally agreed both are needed in the Canadian economy.

Our impression, which apparently is widely shared, is that the provocation for this bill was the collapse of certain provincially incorporated finance and acceptance companies, and that this bill was designed to avoid such an occurrence by any finance or acceptance company incorporated and operating under a federal charter. If this impression correctly reflects the true aims of the bill, then we respectfully submit that, because of the extremely broad definitions of "business of investment" on the one hand and "investment company" on the other, particularly when read in conjunction with the prohibitions in section 8 of the bill regarding certain loans and investments, the bill fails to recognize and sufficiently demark the essential distinction between finance companies, and their chiefly commercial paper assets, and industrial and commercial companies, whose chief assets are the realities of plants and products which may or may not be represented by the shares of subsidiaries engaged in manufacturing, producing, operating and service activities, depending upon the kind of corporate structure which is best suited to the needs of the company.

That is, we feel that because of the breadth of the scope of these two definitions, coupled with the categories of loans and investments prohibited under section 8 of the bill, the legislation will be very likely to have an unwarranted and damaging restraint upon ordinary industrial and commercial companies which are in the investment business only because of their chosen structure of doing business. That is, a structure consisting of wholly or of substantially wholly-owned subsidiaries whose primary business is manufacturing goods, or providing services, for which the parent company assumes responsibility and in which it actively participates in the management of such operations.

We might say in passing that this lack of precision, or of demarkation, between the types of companies which would be covered by this legislation, is emphasized by the provision in the bill of the discretionary exempting power to be vested absolutely in the Minister of Finance, combined with a similar discretionary revoking power in the minister. Rather, in our opinion, these definitions should clearly indicate those types of companies which would, and which would not, come within the ambit of the bill.

Without wishing to be unduly critical of this bill, we must say that we are in principle opposed to any legislation of this type, where the provisions are so broad as, in effect, to allow unlimited inquiries into the affairs of a company, both in time and in scope, and using as the justification of such inquiries the protection of the investing public. We believe that it is incumbent upon the Government to demonstrate the need for the enactment of legislative and administrative powers, particularly those which are as broad as

are contained in this bill. We respectfully submit that this has not been adequately demonstrated.

We would have thought, as indeed is remarked in the Watkins Report, that under existing legislation there is a sufficient and regular flow of financial data and other corporate information to various departments of the Government. We share the view of the Watkins Report, that there may not be, primarily because of the limitations in the existing legislation, a sufficient degree of co-operation by way of exchange of information between the respective governmental departments.

By existing legislation, we refer firstly to the Canada Corporations Act, which requires the filing in the Department of the Registrar General of a company's annual financial statements prepared in accordance with the detailed provisions of the relevant sections.

It also requires the filing with the Secretary of State of prospectuses and offers to the public involving the issuance of any shares or other evidence of indebtedness. And further it requires the delivery to the Secretary of State of a certified or notarial copy of any instrument creating any mortgage or charge securing any issue of debentures, and any mortgage or charge on uncalled share capital, the undertaking or property and other assets of a company.

Secondly, we would refer to the Corporations and Labour Unions Returns Act, which requires the annual filing by each company with the Dominion Statistician a return comprising elaborate particulars as to the capitalization and other financial aspects of the company, and thirdly, to Department of Consumer and Corporate Affairs Act, where the minister is given powers over various matters, including corporations and corporate securities, and bankruptcy and insolvency, and is empowered to undertake research into such matters and to co-operate "with any Department or Agency of the Government of Canada," all as he deems appropriate in the public interest.

It is considered necessary for governmental authorities to obtain on a regular basis, more or different financial information than is presently being furnished under the existing legislation, then we suggest it would be better in principle, and practically more effective, rather than enacting a new bill, to enact appropriate amendments to the existing legislation. In particular, amendments could be made to the Canada Corporations Act, specifying both the type of information to be furnished and the class or classes of company which would be bound to furnish such information. Alternatively, the existing legislation could be amended, so as to allow the governmental departments concerned to co-operate and exchange the relevant information, which is already being massively and regularly produced by all segments of industry.

Finally, we think such an approach would justify the elimination, at this stage, of the whole of Part II of the bill, rather than its deferral for a minimum two-year period. This, in turn, would solve the very real problem raised and recognized at the first proceedings before this committee on January 29, 1969, as to the possibility of the Government being embarrassed because of its being powerless during the deferral period to take any remedial action in respect of any adverse situation of which it had become aware.

In short, we would respectfully suggest that it may well be both unnecessary and unwise for the Government to proceed with the enactment of this bill, or similar legislation, until the problem which it seeks to cure has been fully determined. In other words, we suggest that sufficient facts be first obtained so that the solution to the problem can be closely, but adequately, defined and fully implemented with the least possible interference with normal business activity and with the minimum of discretionary administrative and executive powers.

We did not in our formal submission think it necessary to undertake an extremely detailed clause-by-clause review of the provisions of this bill, but we have certain suggestions to make which I will try to summarize.

Firstly, we believe the definition of "business of investment" should be drawn in such language as will clearly render the provisions of the bill inapplicable to ordinary commercial and industrial companies, regardless of the nature or extent of their investments made in the ordinary course of their principal corporate activities. In the alternative, such definition should provide that it shall be an objective question of fact, or of mixed law and fact, rather than discretionary or arbitrary subjective determination, as to whether the "business of investment" is the principal or predominant activity of any given company.

Or alternatively, we suggest the definition of "business of investment" should be based specifically on a direct relationship between the borrowing of funds from the public and the use of such funds in purely financial transactions, as distinct from the employment of such funds for the ordinary corporate activity of an industrial or commercial company; and secondly, we suggest the proportion of 25 per cent specified in section 2(f)(ii) of the bill should be changed to a proportion of at least 40 per cent, and in lieu of being expressed as a percentage simply of assets, should be expressed as a percentage of the company's total assets, on an unconsolidated basis.

Further, in applying the percentage test we believe there should be excluded (a) cash items, (b) bonds,

debentures, notes or other evidences of indebtedness of or guaranteed by a government or a municipality, and of or by any majority-owned subsidiaries of the company, (c) the shares of any controlled subsidiaries or affiliates of the company, and (d) any loans made by the company under section 15 of the Canada Corporations Act.

Thirdly, we believe the bill should be structured so as to reflect the principal rationale and initial thrust of the proposed legislation, namely, the reporting and gathering of certain financial data and other related corporate information. To that end, we strongly recommend that the provisions of Part II of the bill, sections 9 - 20 inclusively, be deleted in their entirety, in lieu of merely deferring their effectiveness.

And fourth, we suggest that the certain other sections be amended and altered. These are referred to in detail in our submission, and I do not propose to take any more time to deal with them here.

We sincerely hope that these remarks and our brief will have provided some objective and useful constructive criticism in respect of the principles and techniques which we believe are desirable to adopt in producing legislation of this kind.

That is the end of our submission, sir.

The Chairman: Thank you. Are there any questions?

Senator Connolly (Ottawa West): Mr. Chairman, I would move that the full brief as filed by Molson Industries Limited appear as an appendix to these proceedings.

Hon. Senators: Agreed.

(For text of brief, see Appendix "F")

Senator Connolly (Ottawa West): I noticed that at the end of your brief you quoted a very famous person. In the course of your brief you talk about a security subsidiary. I take it that in all of its subsidiary affiliates your organization has not a security subsidiary?

Mr. McCammon: No, sir, in our company we do not have such a company or subsidiary.

Senator Connolly (Ottawa West): Because there is no debt?

Mr. McCammon: Because there is no debt in the parent and virtually none in the subsidiary.

Senator Connolly (Ottawa West): So you have no comment to make about upstream, downstream and lateral loans made by the security subsidiaries?

Mr. McCammon: Not as such, but certainly the provisions of clause 8 of this bill go to preventing downstream loans from parents to subsidiaries and also go to preventing lateral loans as between subsidiaries.

Senator Connolly (Ottawa West): I think the department disagrees with the first point, or at least they did not intend to cover downstream loans; but lateral loans I think they do prohibit?

Mr. McCammon: This of course can interfere considerably with the operation of a company. One subsidiary may happen to be short of cash at a given season of the year, because the business is seasonal or cyclical; and another subsidiary may have more cash; and it seems simpler to go across and borrow.

The Chairman: Senator, you are talking about downstream loans, where the parent borrows the money and runs it down the stream to subsidiaries?

Senator Connolly (Ottawa West): Yes.

The Chairman: That would be covered by the bill.

Senator Connolly (Ottawa West): The department says no.

The Chairman: On clear reading of what it says in the bill, it would cover it.

Senator Connolly (Ottawa West): I have no doubt in my mind that they did not make that point. The only other thing—which I do not press you to answer, Mr. McCammon—is this. Would it be helpful to us if we had a statement, as an appendix to the brief, showing what your subsidiaries are? Would that be of any value?

Mr. McCammon: We would be more than happy to furnish it to you.

Senator Connolly (Ottawa West): Do you furnish it publicly in any event?

Mr. McCammon: I think it is fair to say that in printed form by name we have given it in one place or another—not all in one place at one time.

Senator Connolly (Ottawa West): I do not think we want to get confidential information of the company but if you could devise such a format that would show us that information, it might be helpful.

Mr. McCammon: Certainly, the major operation subsidiary would be no trouble at all.

The Chairman: They are going to be listed in your annual statement?

Mr. McCammon: The bulk of them are, and we would be happy to do that.

Senator Connolly (Ottawa West): I would ask you one other question. In connection with disclosure, when disclosure is called for under this bill, there is no discretion about whether or not that disclosure should be confidential to the department or should be available to the public. Would you have any views on that?

Mr. McCammon: I have very strong views, senator, that any information garnered under the provisions of this bill as now drafted should and must be kept confidential. This bill, for example, gives direct access to the auditor and his worksheets.

Senator Connolly (Ottawa West): In other words, would you assimilate the confidential character of disclosure to the confidential character of the disclosure you are required to make under tax acts?

Mr. McCammon: Very much so. In fact, perhaps even more so, because there is greater opportunity to gather information under this bill than under the Income Tax Act.

Senator Connolly (Ottawa West): Is this mainly because of the fact that disclosure which is made confidentially and which is made public would inhibit people, or at least would make it difficult for your company or any other company to be in competition in the way they want to be? Is there a competitive element feature in your answer?

Mr. McCammon: It certainly would be a factor, because if information in respect of our company were disclosed publicly and we were in competition with a multitude of other corporations, many of which would not by their nature qualify as investment companies under this bill, perhaps because of their corporate structure, such information would not be available in respect of them. This we would consider a serious handicap.

Senator Connolly (Ottawa West): Thank you very much.

The Chairman: Are there any other questions?

Thank you very much, Mr. McCammon. You know that we have had quite a number of sittings and we really have been through this bill before. So much of what you say we understand so perfectly that there are no questions.

Mc. McCammon: I appreciate that.

The Chairman: We now have representatives of The Board of Trade of Metropolitan Toronto. We have Mr.

Walton, Chairman of the Corporation Legislation Committee; and also Mr. O'Connor, the Legal Secretary.

Mr. W. S. Walton, Q. C., Chairman, Corporation Legislation Committee, The Board of Trade of Metropolitan Toronto: Mr. Chairman and honourable senators, Mr. T. G. O'Connor is the Legal Secretary of the Board of Trade of Metropolitan Toronto. I am a lawyer practising in Toronto and I happen to be chairman of this committee of the Board of Trade. It is in this character that we are here to give you the benefit, such as it is, of our views.

The Board asked us to make a submission and, if it is all right, I think I will just run over it quickly in order to refresh your minds.

The Board has an interest in corporation legislation generally and particularly in corporation legislation which may affect numerous corporations.

I am afraid that we did not quite take in the meaning of this Bill S-17 when it was first presented; and I believe that there are many people who are quite ignorant of its provisions and who would be somewhat alarmed if they knew all of them.

In the Board of Trade we feel that the definitions of "investment company" and "business of investment" bring within their orbit companies whose business operations do not fall within the ordinary concept of a company whose principle stock trade is commercial paper.

There have been several descriptions by speakers in the Senate concerning the bill and its ambit—and it occurred, and not only to me, that this seemed to be somewhat of a shotgun approach to this problem of controlling those companies which borrow money from the public and make investments which may not be of the best character, or who try to carry on business too rapidly.

As the bill stands now, it seems to cover manufacturers and companies in the service business and other companies many of whom operate through subsidiaries, as has been spoken of by other people. We also commented in our brief on the term in clause 22 of the bill, "a sound financial structure".

The Chairman: That is the clause dealing with regulations.

Mr. Walton: Yes. There is no attempt to say what is meant by that, and I would respectfully submit that there might be some differences of opinion as to what constitutes a sound financial structure. Also, on the matter of operation under the act, the bill authorizes regulations which seem to us to divest directors of their main function in managing the affairs of the company. We do suggest that there should be appropriate guidelines in legislation of this

kind which would enable one to come to a conclusion as to whether there was a proper structure, financially.

Also under clause 10 (2) (b), the minister may impose restrictions, any conditions or limitations relating to the carrying on of the business of investment that he considers appropriate, and it could be that conditions or limitations might be imposed that were designed to further some particular Government policy of that day. With all due respect, we oppose provisions which confer on the minister such unfettered discretion.

There is provision in the bill for exemption of companies which carry on the business of investment merely incidental to their principal business. We suggest that that is really consistent with the view that the bill is not meant to cover companies where the business of investment is merely an incident. But we think that the intent of the legislation should be accomplished within the act itself, without using ministerial discretion.

We were concerned, too, about clause 5 (6), which empowers the Superintendent of Insurance to require the auditor as well as an officer to provide information concerning the financial condition of the company and its ability to meet its financial obligations. And, under clause 27 (4), there is provision that any auditor who fails to comply with clause 5 (6) is subject to a fine not exceeding \$5,000.

The board feels that the requirement is wrong in principle. The auditor of a public company is not an officer or employee of that company, but is an independent professional accountant and is answerable only to its shareholders. The responsibility for supplying such information, we submit, should rest only on the company and its officers and employees. There would seem to be ample power in the bill as drawn to obtain information from them, and, if the certificate of the auditor is required, well, that could be obtained or could be required from the company.

We had certain specific submissions which I would like to read to you. First, the definitions of investment company and business of investment are entirely too broad. I do not think I need to dwell on that to any extent. I have read the comments in the Senate and I heard the brief which was presented this morning and I have seen other literature on the subject, and I think everyone I know of has taken some exception to those definitions.

The second point is that the aforesaid definitions should be amended so that they include only those companies which fall within the category of finance and acceptance companies, and whose principal stock-in-trade is commercial paper. If borrowing is to be a criterion, it should only be with respect to borrowing from the public. Consideration might be given to the definition of "finance company" con-

tained in regulations under the Securities Act, 1966 (Ontario), and there is a copy of that definition attached to the brief. That is purely an example which might be useful.

The third point is that the ministerial discretion given by clause 10 (2) (b) of Bill S-17 should not be conferred. The fourth point is that the minimum standards of what constitute a sound financial structure should be set forth in the bill rather than be provided by regulation. The fifth aspect is that the Superintendent should not be empowered to require the officer of an investment company to provide information concerning the financial affairs of that company, and the sixth and last point is that the Board supports the principle of Bill S-17 as it applies to finance and acceptance companies.

I would like to make two or three further comments, one of which is along the same lines as one of the recommendations, namely, that there should be more specific exclusions in the definition. I refer to manufacturing companies, industrial companies, service companies, mining companies, oil and gas companies and non-profit companies.

This is a point I am somewhat concerned with. I happen to be the treasurer of the Presbyterian Church in Canada. The legal body for holding the property of the Presbyterian Church in Canada is known as the Trustee Board of the Presbyterian Church in Canada. Of course, it has considerable investments and, possibly, it could be considered as included in this bill. But there is no reference to bodies of that kind in the bill, that is, corporations which have been formed by religious bodies.

Senator Connolly (Ottawa West): Has anybody got 10 per cent of a corner in the church?

Mr. Walton: We have another corporation recently formed for the purpose of borrowing from the public and lending to church congregations. I would think that was definitely within the bill, and I suggest it should not be included.

There is one other point I would like to mention. It does seem to me that in legislation of this kind, if there is to be what you might call ministerial discretion, there should perhaps be some provision for appeal to the courts from what one might consider an arbitrary decision not justified by the facts. There are instances of that, as I recall, under the Securities Act in Ontario.

In Ontario there is the possibility of an appeal to the court, and the Province of Ontario is now considering a new corporation act, and it will, I believe, have provisions for appeals to the court from decisions made by the minister of the department.

Thank you, sir, and gentlemen. That is all I have to say.

The Chairman: Any questions?

Senator Carter: Mr. Walton, I think you suggested that there should be a more precise definition of "a sound financial structure" and that it should be written into the act. I wonder if you have any suggestion as to how to go about defining it?

Mr. Walton: No, certainly not off hand. I would think that would be a matter for the people concerned. We just represent a general interest on the part of Board of Trade.

Senator Connolly (Ottawa West): Would it be fair to say that what you really object to is that the judgment of the board of directors should be substituted for that of the officials of the department?

Mr. Walton: Well, that perhaps would not entirely answer the problem either.

Senator Connolly (Ottawa West): It does not give a positive answer, but this is the basis of your objections?

Mr. Walton: There could be something in the act which would take care of that situation, I would think. But I am not prepared to make any suggestions about how the legislation should be written.

The Chairman: What you are saying is that whatever is going to be said as to what constitutes sound financial procedure etc. should be in the statute and not left to be enacted by legislation?

Mr. Walton: Yes, that is the object of our recommendation, that it should be set forth in some manner, either by guidelines or otherwise so that the companies may know what is expected of them.

Senator Carter: But that would vary for different companies, would it not? If you define a sound financial structure for one company, it does not follow that it would suit another company.

The Chairman: Well, the complaint has been made here that to be able to do that by regulation you make different sets of regulations or guidelines for a particular company. If there are going to be guidelines the feeling expressed was that they should be general and included in the legislation.

Senator Phillips: Would you consider that the best definition would be a company that does not get into trouble in the future?

Mr. Walton: I suppose it would be the best one.

The Chairman: Senator Phillips, would you care to draft that for our consideration?

Senator Connolly (Ottawa West): Mr. Walton, you seem to indicate that finance companies should be segregated from other classes of companies. I take it you have no objection to representations made here last week to the effect that finance and acceptance companies should at least be dealt with in a separate part of the bill so that in effect they could be segregated?

Mr. Walton: It seems to me that it is the viewpoint of most people who have an interest in these things, that the possibility of trouble arising is through those companies which borrow from the public and then lend out their money.

Senator Connolly (Ottawa West): We should agree, I think, for the purpose of the record that there were no federally incorporated companies that had bankruptcies of the type you mentioned.

The Chairman: Mr. Walton, I was getting worried about your reference to the church corporation and the feeling that it might come under the provisions of this bill. Is that a federally incorporated company?

Mr. Walton: Yes, it was incorporated by a special act.

The Chairman: You might then get an exemption.

Mr. Walton: Yes, but it would be a nuisance, and it might cost something.

Senator Connolly (Ottawa West): You must remember, Mr. Chairman, that Presbyterians do not want to spend any more money than they should.

Mr. Walton: I was talking to Mr. Hamilton Cassells, Counsel for the Presbyterian Church, and he called me yesterday about this bill and asked me to bring it to the attention of the committee.

Senator Connolly (Ottawa West): At any rate there is no infallibility in that church.

The Chairman: Thank you, Mr. Walton. Honourable senators, I should have a motion to print the brief which was filed by the Board of Trade of Metropolitan Toronto.

Senator Connolly (Ottawa West): I so move.

Hon. Senators: Agreed.

(For text of brief, see Appendix "G")

The Chairman: Now we will have a presentation by the Federated Council of Sales Finance Companies. Are you going to make the presentation, Mr. MacDonald?

Keith H. MacDonald, President, Federated Council of Sales Finance Companies: Yes. Mr. Chairman, honourable senators, as your chairman has indicated I am here with a delegation of representatives of the Sales Finance industry in Canada. The gentlemen here with me as witnesses are Mr. Jim Johnstone, Secretary, Canadian Acceptance Corporation; Mr. N. M. Peters, General Solicitor, Industrial Acceptance Corporation Limited; Mr. E. A. A. Wighton, Treasurer, Traders Group Limited, and also in attendance is Mr. R. J. Heron, Executive Vice-President, Associates Acceptance Company Limited, Mr. J. C. Aldred, Treasurer, Transamerica Finance Corporation; Mr. W. R. Bradley, Vice-President, Chrysler Credit Canada Limited; Mr. F. N. Comper, Vice-President, Commercial Credit Corporation Limited; Mr. D. O. McCormack, Vice-President and General Manager, Carling Acceptance Limited; and Mr. C. H. Bray, Executive Vice-President, Federated Council of Sales Finance Companies.

As indicated in our brief, the Council welcomes this opportunity to make a submission to your committee and hopes their comments and recommendations will contribute usefully to your deliberations.

We will not attempt to subject you to a reading of our brief. I am sure you would prefer that I do not.

The Chairman: As I told the other witnesses, you can assume that we have read it over. You can take that as a correct statement, as I am sure everybody has.

Mr. MacDonald: Thank you, Mr. Chairman.

Honourable senators, at the outset I would like to stress that we are by no means averse to the appropriate control and supervision of our industry by Government authority. Our submission is intended to reflect upon the "appropriate" aspect and it is toward this end we hope we can make a contribution.

By comparison with many other financial intermediaries, the sales finance industry is a relatively new innovation, having its beginning some 50 years ago and being the product of the mass production, mass consumption equation. As such it has rapidly undergone tremendous changes in scope, shape and size. In Canada today its assets, represented by receivables, are about \$3 billion. Included are consumer and business accounts in almost equal dollar proportions.

A few years ago a Canadian spokesman, the president of an automobile manufacturing concern and president of the Motor Vehicle Manufacturers Association at that time, had this to say about our industry:

The fact that the automotive industry is enjoying fantastically successful times is largely due to

the ability, flexibility, initiative, financial soundness and resourcefulness of the sales finance companies which operate to such a great extent in the automotive financing fields.

While the sales finance industry is best known for its purchase credit plans for merchant and dealer customers, it provides other important support through manufacturers for dealers. Last year the industry volume of wholesale financing, mostly motor vehicle, exceeded \$2 ½ billion. Loans to establish, enlarge and equip automobile dealerships made by the sales finance industry are of the utmost importance to the success of the motor vehicle retail sale and service business.

In 1968 more than \$300 million was provided by the industry for the financing of capital equipment, chiefly farm, construction, plant machinery, refrigerator and air-conditioning, lumber and sawmill, restaurants, hotel and motel, office and electronic data processing equipment. Also a further \$200 million was provided for the financing of trucks, trailers, containers, buses and other commercial vehicles for use on highways and off highways. In addition, sales finance companies supplied important sums for the purchase of industrial and commercial equipment of various types to be leased to Canadian business.

The industry makes its credit plans available to more than 25,000 merchants and dealers in consumer goods and each year serves more than a million Canadian retail customers. Of the vendor consumer credit made available in Canada, sales finance companies supply over 45 per cent.

Since its traditional sources of funds have been banks, life insurance companies, trust and pension funds, the industry has been an excellent medium for investment at profitable yields. Until 1965 in North America the sales finance industry had not experienced a major failure nor had an institutional investor of any kind suffered a loss on its securities. It is a fact that before 1965 experience in investments with sales finance companies in North America had been considerably better than investments in manufacturing, distribution, mining, real estate or other corporations. Even when subsequent losses are included, the total experience with the sales finance industry is still superior.

Honourable senators, I think for the record I should say that Canadian sales finance companies have been held in high regard by professional investors throughout the world: as a matter of fact, no default on the part of any large industry member had occurred until the Atlantic event.

The Chairman: That is a very careful choice of word, is it not—"event"? I would have described the Atlantic as a disaster or fiasco or, certainly, something not entitled to that very nice word "event".

Mr. MacDonald: We did not like to pre-judge this.

The Chairman: It has been pre-judged.

Mr. MacDonald: Perhaps this excellent record lulled investors into a false sense of security which may have contributed to the problems which have been witnessed in the last few years.

Substantial investors in sales finance securities have admitted that before 1965, in a period of high liquidity, with an accent on yields, a tendency toward relaxing of investigation and appraisal allowed investments to be made with companies about which they knew too little in securities which had not been thoroughly appraised.

While the Canadian sales finance industry has historically closely paralleled its U.S. counterpart in most respects, its experience in the commercial paper field only began in 1951. Even today many Canadian companies offer secured notes, while on the other side of the border notes can be sold by large companies on an unsecured basis.

In both Canada and the United States extensive research is available to investors through investment dealers who are specialists in the money market and who engage analysts capable of rating finance company paper. Moreover, many of the large lenders supplying funds to the industry have professional staffs engaged in credit investigation and appraisal.

Since the events of 1965 many changes have taken place. It became evident to sales finance companies that financial and other information, customarily provided to investors and lenders, was not uniform and often depended upon the degree of interest or inquisitiveness on the part of investors. After considerable research, the industry, working with the Investment Dealers Association of Canada and the Canadian Institute of Chartered Accountants, sought to develop better forms of reporting as a pattern for the future. In fact, the Federated Council of Sales Finance Companies has been broadly commended by institutional lenders and investors and the financial press in Canada and abroad for the leadership it has shown in this regard.

It is public knowledge that finance company reports became the subject of a great deal more scrutiny in the years following 1965. In the interim, a number of companies have liquidated, merged, been sold or taken over. Thus the trend is towards larger and fewer companies, and it is expected this will continue.

Perhaps the most notable characteristic of the sales finance industry has been its ability to innovate and to satisfy newly discovered credit needs of consumers and business as soon as they become evident. It would be difficult to over-estimate the beneficial effect upon the Canadian economy and upon our

standard of living over the years by reason of the existence of an industry able and willing to pioneer in the provision of credit in areas not, I submit, serviced by other institutions. The continued growth of such an industry is a matter of importance to all Canadians.

When legislation of the type proposed in Bill S-17 is contemplated, our chief concern is that its provisions be of a type which will not unduly interfere with the ability of our industry to expand, to innovate and to extend new credit services when required. It is probably advisable for some degree of regulation to exist for all financial industries, but I respectfully submit over-regulation can be as harmful as no regulation at all.

In our written submission we present the view that Bill S-17 in its present form provides for an excess of regulatory power. To the extent that it does, we are critical of the bill. We favour legislation which will require sales finance companies to fully disclose all matters of importance to the investing public, but we see no advantage either to investors or to the industry, in legislation which will permit Government authorities to direct how companies can conduct their business affairs.

The Chairman: You do not mean "how companies can conduct their business affairs", but "how companies are to conduct their business affairs"?

Mr. MacDonald: Yes, how they are to conduct their business affairs.

It is probably unnecessary to state that no-one is more keenly interested in the financial health of each company in our industry than we are ourselves. Upon our ability to demonstrate financial soundness depends our ability to attract investment in the market place and thus to carry out our business function.

We point out as well that investors in our industry are neither speculators nor ill-informed. That is covered on the last appendix to the brief. They are of a class which is able to digest financial information and to draw sound conclusions in assessing risk. They will want to know that information made available to them is complete and accurate, and that our industry is properly supervised, but they will not require, nor would they endorse the principle, that our industry operate within a rigid framework of government regulation.

Honourable senators, we are here today to answer any questions you may have arising out of our written submission, and, indeed, any questions you may have relating to the business of sales finance companies. The size of our delegation, I think, reflects to some extent the fact that each company in our industry is somewhat unique, having different

borrowing patterns and in some cases specializing in certain areas of the business known as sales finance. If we are unable to give you today adequate answers to any questions you may pose, we will be happy to obtain and submit to you such information as you may consider helpful in your deliberations on this bill.

We assure you also of our willingness to confer with and advise, to the best of our ability, all government authorities who will be charged with the development and administration of legislation in this area.

The Chairman: Are there any questions?

Senator Connolly (Ottawa West): I should like to move that we incorporate the brief that has been supplied us in the record of today's proceedings.

The Chairman: Does the committee approve?

Hon. Senators: Agreed.

(For text of brief, see Appendix "H")

Senator Connolly (Ottawa West): Mr. MacDonald, I gather from having read your brief and listening to your presentation this morning, that you substantially agree with the representations we received about a week ago from one of the acceptance companies?

Mr. MacDonald: From one of our members, as a matter of fact.

Senator Connolly (Ottawa West): Yes.

Mr. MacDonald: Senator, in speaking today I am representing the sales finance industry as a whole, particularly the 30 members which are members of the council, 19 of which conduct all of their business in Canada, and 11 of which are international companies. These companies are regional in nature, provincial in nature, national in nature, and international in nature. They focus their attention on all areas of business, or particular areas of business, there being a considerable difference between companies. I think in broad general principle I can assure you that the Federated Council of Sales Finance Companies supports the contentions submitted here by Industrial Acceptance Corporation a week ago. Some of our members are somewhat apprehensive about the degree of supervision. Having had considerable experience on an international basis in this area, they feel that supervision can be valuable, but excess supervision can be onerous, time-consuming and costly. We have accepted, I think, the broad general principle enunciated here a week ago.

Senator Connolly (Ottawa West): On page 6 of the brief you suggest that there be established lines of

last resort credit for registered companies, and you indicate that the lender of last resort should be a governmental agency, and you mention the Bank of Canada. I take it that this is the view of all the companies in your industry?

Mr. MacDonald: Senator, the sales finance industry feels that it should be dealt with under an extension of the Bank Act. It was then assumed that the supervision and regulatory power would be under the Bank of Canada. This does not infer any lack of confidence in supervision which might be provided by the Department of Insurance. Companies are already fully cognizant of the work of the Department of Insurance in the area of consumer loans, and are very pleased with the supervision that takes place there. Companies do feel that this line of credit of last resort would be most valuable to companies, particularly in fostering and sustaining the reputation of our companies in the international money markets. Extensive lines of credit are obtained by some sales finance companies from chartered banks in Canada, and by other companies from chartered banks in Canada and elsewhere. However, these are more costly, and since the sales finance industry finds itself in a position of obtaining lines of credit from one of its principal competitors, this does not seem to be the best possible position for the future.

Senator Connolly (Ottawa West): I am interested in what you say about its being more costly. I think it would be less costly if the last resort credit were supplied by a government agency rather than a chartered bank.

The Chairman: It might enlarge the field of lenders, and there might be more security.

Mr. MacDonald: I think it would help to inspire a new feeling of confidence in the industry in Canada—considering the events that have taken place. If our industry were to be treated under an extension of the Bank Act, I think in the eyes of international investors it would do a great deal for the industry. It would make funds more readily available, and perhaps at lower rates. Of course, it must be borne in mind that lines of credit with banks are not entirely dependable.

Senator Phillips (Rigaud): Are you suggesting that the money supply of finance companies should be increased or decreased by application of the policy of the Bank of Canada?

Mr. MacDonald: Not at all, senator.

Senator Phillips (Rigaud): How will you be getting your money then other than through the medium of the money supply by the . . .

The Chairman: He is talking about last resort credit.

Mr. MacDonald: We would propose to obtain our funds in the same way. We would propose to continue lines of credit at the banks, which are largely stand-by lines of credit. They are useful in paying for a run-down in our commercial paper, if such an event occurs. Generally, companies find the short-term money market quite dependable for continuous roll-over. It is only in a period of crisis, such as that which occurred in 1965, and in the unfortunate position in which a particular company might then find itself, that a company would use this last resort credit as a substitute for its present method of obtaining funds. It would be a line of credit of last resort.

Senator Phillips (Rigaud): A line of credit from the Government through the Bank of Canada?

Mr. MacDonald: A line of credit of last resort through the Bank of Canada.

Senator Phillips (Rigaud): There would be others who would like to join with you and enjoy that privilege.

The Chairman: Why limit it to companies, senator? There might be a number of individuals as well.

Senator Phillips (Rigaud): Yes.

Senator Connolly (Ottawa West): As I understand the witness, I think what he is actually saying is that the recommendations of the Porter Commission in this respect are the ones that he would like to see apply to this scheme of near-banking institutions.

Mr. MacDonald: That is right, senator.

Senator Phillips (Rigaud): Except, senator, I do not think the Porter Commission went so far as to say there should be made to the finance companies or the so-called near banks a money supply similar to that now provided for the banking institutions of this country, which latter institutions come under the Bank Act.

Senator Connolly (Ottawa West): No, I do not think they went so far as to say these companies should go as far as the Industrial Development Bank was, able to go, or the Bank of Canada; I think there is a line to be drawn between the two.

The Chairman: Where would you draw it?

Senator Phillips (Rigaud): On the assumption that the definition of "investment companies" was contracted to cover institutions of your type, do you

see any objection in Part I of the bill to giving the broadest rights of inquiry to the Superintendent of Insurance in the Department of Finance on a current basis to investigate the operations of the types of company in which you are interested, with appropriate right to the Department of Finance to submit such information to any department of government it thinks appropriate in the circumstances?

Mr. MacDonald: The industry itself has no apprehension about the supplying of information to whatever government authority it is.

Senator Phillips (Rigaud): No, the right of inquiry as distinct from the supplying of information, as contemplated by Part I. There is a contemplation of initiative under Part I of the Department of Finance walking in and getting information, as distinct from supplying it. Do you see any objection, by way of basic interference with the operation of your business, to allowing the Department of Finance to have a current look-see from time to time, on the theory of Chinese medicine, to avoid an illness such as Atlantic, and giving the Department of Finance a right after acquiring that information to channel it through appropriate sources, say to those who administer the Canada Corporations Act, the Bank of Canada and that sort of thing? Would it bother you if that right were given to the Department of Finance?

Mr. MacDonald: In general principle, no. The industry has no aversion to providing information, nor would it have aversion to the right of inquiry to look into the affairs of the company if it serves a useful purpose. It has some apprehension about the weight and extent of inquiry and supervision to the extent that it becomes costly and time consuming.

Senator Phillips (Rigaud): I am not dealing with supervision by way of order in council and regulation. I am confining myself to the issue of inquiry.

Mr. MacDonald: I see no objection basically on the part of our companies. However, I would like to make this suggestion. It is true that some of our companies, being of an international nature, do not otherwise disclose their Canadian affairs separately. They would prefer that such information as is submitted be treated in confidence and not otherwise available, for competitive and other reasons.

Senator Connolly (Ottawa West): You make that point in your brief on page 11.

Mr. MacDonald: That is the intention of that reference.

The Chairman: In view of this discussion I am wondering what you had in mind when you made

use of the expression on page 6 of your submission today that "over regulation" can be as harmful as no regulation at all. What did you mean in the context of this bill as constituting over regulation?

Mr. MacDonald: If by an extension of the bill an endeavour were made to establish certain criteria, particularly ratios by which it would be assumed that companies conforming would be thought sound companies and those that did not conform thought to be less than sound companies, I think that would be a very harmful type of legislative regulation; it could put the stamp of approval on that which may not be sound and withhold the stamp of approval from something which is perfectly sound.

The Chairman: In summary form, what you say is that you know your business, you know ratios and every other item of it in relation to borrowing and lending money, and all that sort of thing, and you should be left to apply your own judgment, the function of any government department being to keep in touch with what you are doing to see whether when the public invest in your companies, by way of lending or otherwise, which money you then put out, it is being wisely handled.

Mr. MacDonald: Our investment receivables by and large aggregate \$3 billion; the investments we make in receivables must be sound. We are, however, subject to a continual discipline which we think is the strongest of all, and that is the discipline of the market place. If we are not operating our companies soundly, if our performance statistics do not indicate we are operating soundly, we will not be able to obtain further funds. This is a very strong discipline carried out by knowledgeable people, by professional people. As a matter of fact, in the United States there is a central agency that passes on companies from a credit standpoint for commercial paper purposes. This same thing is done somewhat informally by the Investment Dealers' Association of Canada and by investing institutions. These disciplines are very strong and very effective, and are carried out from the standpoint of the supplier, the investor.

The Chairman: But somehow or other the discipline of the market place seemed to fail, or to have been on holiday, when such a thing as, for instance, the Atlantic Acceptance fiasco occurred.

Mr. MacDonald: That point has been well covered in the financial press in both Canada and the United States. I believe the conclusions drawn are that there was a substantial relaxation of normal criteria, of normal appraisal and investigation by institutional investors, because of the high liquidity situation then existing and because of a search for higher yields. This caused investments to be made in companies which, upon later reflection, should have been

looked at more carefully, and of course caused the fiasco—as I should call it at this time—that occurred.

The Chairman: Do you think this could not happen again even with the discipline of the market place?

Mr. MacDonald: We think it is extremely unlikely. A great deal has happened in the interim. Companies, Canadian and international, are supplying much more in the way of information, the reporting is much more uniform, the investigation is much more intensive. I think the fact that companies have been sold, that companies have been liquidated, that there have been so many mergers taking place, indicates that the availability of funds has tightened up considerably for those companies that may have been marginal. We think this type of discipline will continue into the future. It is dealt with in a submission we made to the Royal Commission on Atlantic Acceptance, commonly known as the Hughes Commission, in Ontario. We can submit a copy of our brief in that connection, which contains quotes indicating that institutional investors now admit that they had become far too lax in their standards.

Senator Connolly (Ottawa West): Would you file a copy of that for the use of the committee?

Mr. MacDonald: I would be happy to do so.

Senator Connolly (Ottawa West): I do not suggest that it be printed. I do not know how voluminous it is, but perhaps the committee would like to have a copy. I see, now that you produce it, it is too big to print.

The Chairman: We will keep this for reference, but it still gets back to the question by Senator Phillips, which I think you answered. The discipline of the market place is good. Do you think it is working well now, and whether or not you have an outside source, like a Government department looking in on your operations, would it give that extra measure of assurance to the public and might catch some of these occurrences before they move too far.

Mr. MacDonald: Mr. Chairman, I think its particular value would be in the requirements with respect to disclosure. I believe perhaps one of the most important things to consider here is the information that is required of companies and the information that is made available. Substantially more information is now available than was the case before 1965, and, for two reasons. Companies have always been prepared to provide it, but investors generally had not required it nor did they seem interested. Today that situation has changed entirely and I believe that the provisions of the bill will be most important in the area of disclosure, and in the meaningful reports required of companies.

The Chairman: Would you say when disaster strikes and it appears that things have not been run properly in a particular company or industry and that there might even be elements of a bad practice or even dishonesty contributing to this disaster the reaction of the public right away is, "What has the Government been doing, are they not interested in how their money is being used by the people to whom it is loaned?"

Now, this is the duty that the Government feels it should take on and you do not disapprove of it, I take it, so far as the furnishing of information and as inquiry is concerned?

Mr. MacDonald: Mr. Chairman, we heartily endorse that aspect. I should perhaps make this point. Some of the companies about whom we have all been reading were not essentially finance companies, though they bore the name of finance companies.

I think of particular interest in this bill is the definition of a finance company. If a material percentage of a company's business is the business of sales financing, then that company is entitled to be called a sales finance company, but we have had cases of companies which were hardly known by our members in the business of sales financing, yet bore the name and perhaps became entitled to credit because it was assumed they were in the finance business.

Mr. Chairman, one of our delegates has a point he would like to make.

The Chairman: Yes.

Senator Hollett: Before he does, I would like to ask a question on page 2 of your brief. You say you were by no means adverse to the appropriate control of our industry by Government authority. In your opinion would you define what you mean by control by a Government authority.

Mr. MacDonald: Mr. Senator, control may have been an ill-chosen word there.

Senator Hollett: I think so.

Mr. MacDonald: I think we were trying to put ourselves in the position of the Government in this case. Would the Government feel it had control of the situation? We were thinking largely however of the supervision and the reports being submitted, and that the Government would then be knowledgeable in this area of business and know what companies are doing.

Senator Hollett: Then you do not think that the word control should be there at all?

The Chairman: I think the only basis for having it there might be that the Government would have some right or some authority if its supervision disclosed a situation that required action to protect those who had money invested. He may have it in the wrong order when he says appropriate control and supervision. I think what he means is appropriate supervision and authority if action is needed.

Senator Hollett: Is there any act in existence whereby the Government has control over such an industry?

Mr. MacDonald: Under the Ontario act, Mr. Senator?

Senator Hollett: No, I am thinking of federally then.

Mr. MacDonald: We fully endorse the disclosure aspect, and inspection by government to verify disclosure. It was in that sense that the word control was intended. By putting ourselves in the place of Government we thought that this was the best way in which the Government can insure that the industry operates as the Government would like it to do, by requiring companies to submit information which is meaningful and which fully discloses the kind of business the company is in, the kind of receivables it has, the condition of those receivables, and the content of its profit and loss account. We think if a Government department is receiving this type of information it has the information it requires to insure that events which have happened will not recur.

Senator Connolly (Ottawa West): Before Mr. MacDonald leaves, Mr. Chairman, looking back first of all to what Senator Phillips asked—and I thought it was a particularly appropriate question—and to the answers given by Mr. MacDonald to you on the question of disclosure and investigation, could I ask Mr. MacDonald this question: you have suggested roughly that generally companies such as are represented here by you today should be assimilated to near-banks as the Porter Commission suggests. I would assume from that, when you further press for the consideration of having the credit of last resorts applied by a governmental agency, that any onus cast upon that creditor of last resort is alleviated very greatly by the amount of supervision and inspection that would be imposed upon these companies if they were in fact assimilated to near-banks.

Mr. MacDonald: Mr. Senator, I think it has an additional advantage too. It provides another form of discipline. If a line of credit of last resort were extended by the Bank of Canada, it would be used in only extreme circumstances and for only brief periods, and companies would impose upon them-

selves the additional discipline of endeavouring to avoid the use of this line of credit of last resort.

Senator Connolly (Ottawa West): In other words, what you really are getting at is to give the public confidence in these companies which are so important in the economy today. You want them to be operating under the best possible auspices. I gather that is the whole thrust of your argument.

Mr. MacDonald: Mr. Senator, we are most concerned that there be confidence in our industry and that it be able to obtain funds to carry on and extend, as well as expand, its business. We know that confidence is something that is easily lost and difficult to re-establish. I am a director of the American Industrial Bankers Association of the United States, and I attend their meetings and have found that they have less difficulty because the industrial banks in the United States are brought under state authority. Having the name industrial bank, tends to lend confidence to the industry. We have no ulterior motive in these suggestions. Our intention is to make suggestions to you based on our knowledge of the industry, which will contribute to making it sounder, and will develop and sustain the kind of confidence that people should and can have in our industry.

We think that if we were dealt with under an extension of the Bank Act this in itself would give recognition. We would continue to carry the substantial reserves that we do now. We would continue to borrow from the same sources, we would be subject to the same market disciplines as we have now; but we would have this additional line of credit which would tend to generate new confidence in the industry. That line of credit, we know, could not be used for purposes of operation the business: it would be the last resort, to be used on a temporary basis, for a very short period only. I think the discipline would deter companies from using it.

Senator Connolly (Ottawa West): You are not too different from the position of governments who find themselves in trouble and have to resort to the International Monetary Fund.

Senator Burchill: This idea of the company extends to the United States, too, I presume, in their attitude towards Canadian investment?

Mr. MacDonald: It extends there, and they were most disappointed when the events happened in Canada. They were quite surprised that such an event could have occurred. They realized, upon reflection, that they had known all too little about some of the companies concerned. Their investigation had been too scanty.

The Chairman: They have had that experience in their own country, Mr. MacDonald.

Mr. MacDonald: Mr. Chairman, that is correct. They have subsequently had similar experiences with companies in the United States; and there has been some accommodation extended to other companies, to prevent similar occurrences.

However, considerably more care is taken in the United States today to ensure that companies are operating on a better basis than they were in times of high productivity and high yields.

Mr. J. D. Johnstone, Secretary, Canadian Acceptance Corporation Limited, Member of Legal & Legislative Committee of the Federated Council of Sales Finance Companies: Mr. Chairman, I would like to make some comment in regard to Senator Connolly's mention of the line of credit of last resort. I think you asked whether all companies would require such accommodation, and I suggest that such might very well not be the case. A number of the companies are financially in such a position that we would not look for credit lines of last resort, with the costs incidental to having such lines of credit available, and it would not be necessary for or requested by such companies.

Senator Connolly (Ottawa West): Is it because they do not need it?

Mr. Johnstone: Because such companies do not need it to generate funds. That is correct, sir.

Senator Connolly (Ottawa West): What do you say about the question Mr. MacDonald raises, about the provision of it to inspire confidence in the industry?

Mr. Johnstone: The difficulty, Senator Connolly, is that there are a number of different types of corporations represented by council. There are Canadian finance companies, there are American subsidiaries of gigantic American finance companies, and there are captive finance companies of large manufacturing concerns.

Senator Connolly (Ottawa West): They are all incorporated in Canada?

Mr. Johnstone: They are all incorporated in Canada, but they do not require lines of last resort credit to increase confidence, simply because of their parental background or their own financial state. Their positions are quite different and distinct.

Senator Connolly (Ottawa West): If it is going to be helpful for Canadian incorporated companies and Canadian owned companies to have this kind of credit of last resort, do you think that these foreign owned companies would object?

Mr. Johnstone: Not at all, sir. I simply suggested that some might not seek it. The question is whether

it would be permissive or mandatory. They might not seek it but certainly they would not object.

Senator Connolly (Ottawa West): Thank you.

The Chairman: It might be made permissive. I would think that if any such plan were to be evolved there would be discretion as to whether it would be made available in such cases.

Mr. Johnstone: That is right. I think that the 12½ per cent reserve that has been suggested for short-term borrowings is one that might deter certain companies from seeking the line of last resort credit, if they do not require it.

Mr. MacDonald: A question came up in regard to companies under the United States Investment Companies Act. Mr. Johnstone has information on that, if you would like him to table it.

The Chairman: Yes, if you would table it. We have our own statute and our reading of it, but if you have something on that we would appreciate having it.

Mr. Johnstone: The only information I have in regard to that act in the United States is that it is not applicable to finance companies. It is administered by the Securities Exchange Commission, as is the Trust Investment Act, but it related specifically to investment companies which deal in and trade in securities, not to companies which advance money against receivables.

The Chairman: We had discussions here earlier as to the definition of "investment company" in the United States statute and as to whether it should be applicable and be the definition to be used in this bill. They seem to follow a general definition of really buying and selling and trading in securities, and then they proceed with a tremendous series of exceptions.

Mr. Johnstone: That is quite right, sir. To my knowledge there is no legislation in the United States which imposes a control on the borrowing ratios of finance companies related to capital. Disciplines imposed by the money and capital markets, industry activity and good money management judgment are the factors which create stability. The only applicable ratios which I know of related to life insurance company lenders to protect the policy holders against improvident lending.

The Chairman: Thank you. I take it you have concluded your presentation?

Mr. MacDonald: Yes, Mr. Chairman, thank you very much.

The Chairman: We have concluded the submissions for today.

Senator Connolly (Ottawa West): Mr. Chairman, are you closing on this bill?

The Chairman: No. There are some things I wish to say. We have a letter from George Weston Limited, addressed to the Chairman, expressing their views in relation to this bill.

We also have a letter, which has also been distributed, from the Imperial Tobacco Company of Canada, addressed to one of our senators, and a copy was forwarded to me. It expresses their views.

I think these letters, indicating their views, should be attached and printed as an appendix today.

Senator Connolly (Ottawa West): Mr. Chairman, as I am not the addressee of these letters, I move that that be done.

Hon. Senators: Agreed.

(For text of letters, see Appendixes "T" and "J")

Senator Connolly (Ottawa West): Mr. Chairman, could I ask if you have, as I have had, a letter dated February 27 from the Investment Dealers' Association? Are they going to present evidence? Perhaps we would like them to come to the next meeting?

The Chairman: I do not think I can answer that question, because I could not answer it myself, so I decided we should let that letter stand.

Senator Connolly (Ottawa West): Very well. A letter has just reached my desk this morning from a very distinguished Canadian, with reference to United Dominion Corporations (Canada) Limited. The distinguished Canadian is the Honourable George Drew. There are some views expressed in an accompanying memorandum, which frankly I have not had a chance to look at. Perhaps you had that letter, too?

The Chairman: I may have it. It may be in the mail, but I have not seen it yet.

Whereupon the committee proceeded to the next order of business.

APPENDIX F

SUBMISSION BY

MOLSON INDUSTRIES LIMITED

TO THE

SENATE OF CANADA STANDING COMMITTEE ON
BANKING, TRADE AND COMMERCEREGARDING BILL S-17 : "INVESTMENT COMPANIES ACT"
MARCH 1969

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1. Molson Industries Limited ("Molson"), formerly named Molson Breweries Limited, is federally incorporated and is a large, multi-national, multi-product organization producing and marketing its products in Canada, the United States, Mexico and Europe through approximately 200 plant, warehouse and sales office locations. It has approximately 7,500 employees and is owned by over 12,000 shareholders.

Molson produces and markets ale and beer all across Canada, where it is the second largest in the industry. Molson also markets its ales and beer in the north-eastern United States and has a 42% interest in a brewery in Seattle, Washington and through it, an interest in the California wine industry.

Molson also manufactures an important range of other products which are produced and marketed in Canada, the United States, Mexico and Europe. The markets for these products include construction, petroleum marketing equipment, industrial, consumer, agricultural and office equipment and supplies. While these operations are primarily engaged in secondary manufacturing of durable products, other products and services, such as business forms and services, equipment rentals and warehouse facilities are marketed as well. In addition, Molson controls a company which is a principal distributor of school supplies and one of the largest manufacturers of household furniture in Canada.

Molson is actively engaged, either directly, or indirectly through a total of 56 controlled subsidiaries and affiliates, in the management of these operations and its shares are listed on the Montreal, Toronto and Vancouver Stock Exchanges.

Molson wishes to register its general concern in respect of this Bill and, in doing so, question the present necessity, or even the desirability, of its enactment in the light of existing federal legislation, the nature and scope of the Bill's provisions, and the present lack of definitive knowledge as to whether and, if so, to what extent there is a problem and of what sort of legislation would be the most effective to cure it.

2. In making this submission, we wish to emphasize that we do not seek to impugn the inherently laudatory purposes of the Bill, as we are, as a matter of corporate policy, in favour of legislation which has for its design and purpose the overall protection of the investing public, provided that in effecting such protection, companies which are directly or indirectly actively conducting industrial or commercial businesses are not effectively prevented or unduly hampered in the free and intelligent use of capital and surplus funds generated by their business operations through unduly restrictive laws and regulations, or where such right is virtually rendered incapable of exercise because of a climate of uncertainty created by extremely broad discretionary powers vested in public officials without any guidelines and on an absolute basis.
3. Our study of this Bill, coupled with what are, we believe, reasonable inferences drawn from both the debate on its second reading and the proceedings heretofore held before this Committee, has lead us, with respect, to the conclusion that the implications of the Bill and the possible ramifications of its implementation, even in its initial stage, will, or are likely to, produce the unfavourable climate we mentioned above and, hence, that the passage of the Bill into law would simply defeat the justifiable and good purpose it was apparently designed to accomplish.
4. We feel that the defects of the Bill result essentially from confusion between the ordinary commercial concepts, respectively, of finance, investment, and industrial companies. While it is true that nothing in the Bill, nor in the debate on its second reading, nor in the proceedings heretofore held before the Committee, makes express reference to the particular financial institutions which may be covered by the Bill, we feel it is equally true to say that the public impression is that the Bill was inspired by the collapse of certain provincially incorporated finance and acceptance companies. In this regard, the following quotations are relevant:

Hansard, November 21, 1968, page 601: Senator Paul Desruisseaux, in moving the second reading of the Bill, remarked:

"A large number of federally incorporated companies act in the capacity of financial intermediaries. Many of these, such as banks, insurance, trust and mortgage loan companies, are presently supervised and regulated in the interests of their creditors under existing legislation. However, there are many of diversified types, but including primarily finance and acceptance-type companies, for which there is no comparable supervision or regulation. Recent collapses of several of this type, although essentially involving companies under provincial jurisdiction, have pointed out the danger of such a vacuum. Many investors have suffered losses and, on occasion, confidence in the stability of our financial institutions has been shaken."

First Proceedings, January 29, 1969, Pages 165 - 166:

Mr. R. Humphrys, Superintendent of Insurance, stated to the Committee:

"...the purpose of this Bill is to establish a system of reporting and inspection for companies that are engaged in any aspect of the business of a financial intermediary, and in due course to establish a system of control for those companies that are in a weak or dangerous financial condition. As you all know, we already have quite an extensive system of supervision, reporting, inspection, and control for major classes of companies that are acting in some respects as financial intermediaries. These are banks, insurance companies, trust companies, and mortgage loan companies. There is, however, another group of companies that are engaged in borrowing money on debt instruments and using a significant portion of their funds for investment purposes as distinct from purposes relating directly to commercial and industrial activities. This group of companies is not now subject to any regular system of reporting, supervision, or control."

5. At this juncture, it might be useful to set out for examination the characteristics normally attributed to investment and finance companies, and other financial intermediaries, in their ordinary concepts, as opposed to general industrial and commercial companies. In the 1964 report of the Royal Commission on Banking and Finance ("Porter Commission") at pages 89 - 90, the following comments appear:

"The financial institutions and markets, on the other hand, are merely intermediaries whose function it is to ease, and sometimes to encourage, the flow of credit from surplus to deficit units."

"The financial intermediaries and markets deal almost entirely in financial assets and liabilities as opposed to physical goods and non-financial services, and this is what distinguishes them from other enterprises."

"Their assets are the debt instruments and equity shares of final borrowers or users of funds and, to a lesser extent, of other intermediaries. These are financed by issuing their own liabilities principally in the form of promises to pay of various kinds, but also in the form of shares, which are held as assets by final lenders or suppliers of funds and, in minor amounts, by other financial institutions."

Paraphrasing Section 8(1)(d) of the Regulations under the Ontario Securities Act, a "finance company" may be described as a company for which a material activity involves:

- "a. purchasing, discounting or otherwise acquiring promissory notes, acceptances, accounts receivable, bills of sale, chattel mortgages, conditional sales contracts, drafts, and other obligations representing part or all of the sales price of merchandise, and services,
- b. factoring, or purchasing and leasing, personal property as part of a hire-purchase, or similar business, or
- c. making secured and unsecured loans...."

We would also refer to a research study prepared by Mr. St. Elmo V. Smith, F.C.A., and published by The Canadian Institute of Chartered Accountants, entitled "Finance Companies - Their Accounting, Financial Statement Presentation, and Auditing" which contains a review and description of the finance company industry in Canada, and the following extracts are taken therefrom:

Page 2: "The finance company industry comprises companies engaged primarily in providing credit to individuals and to commercial organizations. These companies include some which operate independently and engage in various forms of financing, and others which have been formed by manufacturers or large retail stores to provide financing for their customers only. It is more usual, however, to find finance companies associated in groups which carry on their operations through a parent company and a number of specialized subsidiaries, each of which operates primarily in a different sphere of financing."

Pages 3 - 4: "Finance company groups frequently extend their operations, through subsidiaries, into other related and non-related activities...."

"Normal accounting practice calls for the preparation of consolidated financial statements by parent companies, whereby the assets and liabilities, and the income and expenses of its subsidiary company or companies would be consolidated with those of the parent...."

"When a finance company group has diversified and includes non-finance subsidiaries, such as subsidiaries engaged in insurance, merchandising, or commercial operations, there would probably be some merit in such subsidiaries not being included in the consolidated financial statements...."

"In the finance company industry, shareholders' funds represent only a minor part of the total funds in use, the major part being obtained from secured and unsecured borrowings...."

Page 59: "In a typical finance company, capital requirements may be derived from any of the following sources:

1. Demand bank loans.
2. Short term notes payable.
3. Medium and long term notes payable.
4. Debentures.
5. Shareholders' funds.

Further subdivision of these headings will be found in practice, in addition finance companies which are subsidiaries of other companies may make use of advances from their parent company, either on a semi-permanent basis or simply for limited periods.

None of these sources or funds are itself peculiar to finance companies, and companies in other industries may, and frequently do, derive their capital requirements from the same sources. What is peculiar to finance companies is the fact that a typical finance company will frequently draw upon all these sources at the same time shareholders' funds generally represent only a minor part of the total funds in use by finance companies, the major part being provided by borrowings from these other sources.

This fundamental characteristic of the finance company industry arises from the fact that it would generally not be feasible to sustain effective operations and a sufficiently attractive earning power simply on the basis of funds provided by shareholders. It is essential for a successful finance company to have borrowed funds and to earn income on the spread between interest received (either as such or in finance charges) and interest paid on the borrowings."

So far as concerns investment companies, some idea as to the special status of these companies, as opposed to ordinary commercial and industrial companies, and even as opposed to financial holding companies which are recognized, at least implicitly, in Section 12(6) of the Income Tax Act, may be derived from the provisions of Section 69 of the Income Tax Act, which deals expressly with investment companies and sets forth the very special characteristics which any such company must have before it can claim the tax status of an investment company. Then, there is the definition of "investment company" in the Investment Company Act of 1940 of the United States, which definition is admirable in its simplicity and covers any company which "is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, re-investing, or trading in securities". The definition also covers any company which "is engaged or proposes to engage in the business of investing, re-investing, owning, holding, or trading in securities, and owns or proposes to acquire

investment securities having a value exceeding 40% of the value of such company's total assets (exclusive of government securities and cash items) on an unconsolidated basis". "Investment securities" are described as including all securities except government securities, and securities issued by majority-owned subsidiaries of the owner-company which are not investment companies. The Act then provides for certain exemptions, including any company which is 'primarily engaged, directly or through a wholly-owned subsidiary or subsidiaries, in a business or businesses other than that of investing, re-investing, owning, holding, or trading in securities'. It should be noted that this exemption is granted by the Securities and Exchange Commission not on a purely discretionary basis, but on the basis of the facts submitted by the applicant company, which may obtain a review of the order by the Commission, refusing exemption, in the appropriate Court of Appeals in the United States. This Court may affirm, modify, or set aside, in whole or in part, any such order of the Commission, and the Court's judgment or decree in this regard is, in certain circumstances, subject to final review by the Supreme Court of the United States.

6. Against this background, and given the normal structural ramifications of current corporate operational and financial practices, we do not understand what prompted the draftsman of the Bill to provide the extremely broad definition of 'business of investment' contained in Section 2(b) of the Bill, inasmuch as it is difficult to imagine what reasonably active company, regardless of the precise or primary purpose for which it was incorporated, or of its principal activities, would not come within the purview of the definition simply and immediately upon its issuing any form of debt instrument whatsoever, including even instruments issued to evidence routine and operational bank borrowings. It is true that Section 3(2) of the Bill provides for the discretionary granting by the Minister of exemption from the application of the Bill under certain conditions, including the situation where borrowings are restricted to bank borrowings and/or from any shareholders owning individually more than 10% of the outstanding voting shares. The question is, why should companies which are carrying on ordinary commercial and industrial activities have to be put to the trouble and expense of seeking such an exemption, and be in doubt as to whether the Minister will see fit to grant an exemption, and with the knowledge that any exemption which is granted may, again essentially on a discretionary basis, be revoked at any time by the Minister under Section 3(3). It is difficult to see how so broad a definition would in the net result truly serve to protect or be in the public interest, as the virtually unlimited scope of the definition, combined with such discretionary exempting and revoking powers, would in our view render the administration of the Bill unworkable and at the same time impose an undue burden of expense and confusion in the routine operations of normal commercial and industrial companies.
7. The unfortunate and, we submit, unnecessary broadness of the definition of 'business of investment' both results from, and is emphasized by, the prescription in Section 2(b) of the Bill of the two factual preconditions of the borrowing of money and of certain prescribed uses of assets without regard either to the precise purpose of the borrowings or to the precise use of the funds borrowed. That is, there is no distinction made between funds borrowed

expressly for the purpose of, and used for, financial transactions, as opposed to funds borrowed in the normal course of a company's industrial or commercial activities simply for the purpose of and used for such matters as plant acquisition or expansion, or inventory financing. A normal business concern might well co-incidentally borrow funds for capital expenditure needed in connection with its normal activities and use the whole or a portion of its surplus earnings for a purely financial transaction, in which event, assuming that it met one of the tests set out in Section 2(f) of the Bill, it would thereby and thereupon be deemed to be carrying on the "business of investment" and, hence, subject to the overall regulatory provisions of the Bill, unless such company was able to obtain and retain an exemption under Section 3(3) of the Bill. We respectfully submit that the problem raised by the Superintendent of Insurance, Mr. Humphrys, at the First Proceedings on January 29, 1969, "of tracing the dollars. You can never be sure which dollar is used for what", does not justify the lack of precision in the definition of "business of investment", nor the resultant inclusion therein of an unrelated and incidental activity of an ordinary industrial commercial company effecting a financial transaction with funds out of its surplus earnings, as opposed to monies borrowed and used expressly for that purpose. We are against any legislation of this type, where the provisions are so broad as in effect to allow and encourage public officials to engage in "fishing expeditions" unlimited both in time and in scope, and using as the basis of justification therefor the protection of the investing public. We believe that it is incumbent upon the government and the public officials to demonstrate the need for the enactment of legislative and administrative powers, particularly those which are as broad, or more precisely, as undefined, as are provided in this Bill, and we respectfully submit that nothing in the proceedings heretofore held before this Committee has accomplished this demonstration. On the contrary, such proceedings establish that the powers are required in order to enable the government to determine whether or not and, if so, to what extent, there is a present need for legislation of the type contemplated in the Bill.

8. The unduly broad scope of the definition of "business of investment", and the matters related thereto as discussed above, were duly noted and raised by each of the Senators who spoke on the Bill during the course of the debate on its second reading. During the First Proceedings held before this Committee on January 29, 1969, the Superintendent of Insurance, Mr. Humphrys, in discussing this aspect of the Bill, stated in part (at pages 167 and 168):

"The principal reason for the broad definition, that I am sure strikes everyone forcibly when they first pick up this piece of legislation, is to enable us to get a regular flow of information, so that we can answer the very question that you posed, and we can be in a position to make worthwhile and sound recommendations to the government as to regulatory provisions that may be appropriate for different types of companies. We recognize that in this definition, the very broadness of it, it covers a great variety of companies, not only companies that people normally think of as investment companies, but it goes far beyond that. That was recognized and it was intended for the purpose of gathering the information."

"The main emphasis has been on gathering information; but the emphasis on gathering information and supervision is aimed at companies that borrow on debt instruments as distinct from companies that raise the money only on the sale of shares. If a company raises its money only on the sale of shares, it would not be subject to this Act."

Also at the First Proceedings held on January 29, 1969, Mr. A.B. Hockin, Assistant Deputy Minister of the Department of Finance, stated at page 182:

"I think there is no suggestion that the intent of the Bill is to catch companies whose business, on a regular basis, in their normal operations, is not with investing, but the investment really comes about incident to their flow of cash which they may have at times for the purpose of their regular business, be it industrial or commercial. The intent of the exclusions which Mr. Humphrys has described, and as he has said, is to take that company out of the ambit of the Act."

The problem is, of course, as pointed out by Senator Hayden immediately following Mr. Hockin's above quoted remarks, that the Bill in its present form expressly denies that intent, and it is the language of the Bill which governs, rather than the intent which purportedly lies behind the language used.

9. In the course of the First Proceedings held on January 29, 1969, before this Committee, and referring to the supervisory provisions contained in Section 5 of the Bill, Mr. Humphrys contended that, while under existing legislation financial information of various sorts was required, it apparently was not in detail sufficient to enable governmental officials at this stage to draft legislation containing precise definitions and guidelines both as to companies which should be covered, and to uses of borrowed funds. In conformity with the "fishing expedition" approach adopted in the drafting of this Bill, it should be noted that the "annual statement" required under Section 5 is not necessarily the customary audited financial statement of the company, but rather some sort of non-defined but, presumably, financially oriented yearend statement regarding the condition and affairs of the company which "shall be in such form and shall contain such information as is prescribed by the Superintendent". In addition to this very broad discretionary power to extract financial data and other related corporate information, Section 5(6) allows the Superintendent direct access to (amongst others) the auditor of any company, without the prior knowledge, much less the prior consent, of the directors or senior officers of the company, to demand and obtain from the auditor such additional information as the Superintendent may require "and as he considers necessary to enable him to ascertain the financial condition of the company and its ability to meet its financial obligations". Still further, Section 6 of the Bill authorizes an "Inspector" to "enter any office of an investment company" or any subsidiary thereof, to inspect and obtain copies and extracts from, "any books, records or documents relating to the business, finances or other affairs of the investment company" or of any of its federally incorporated subsidiaries.

10. In this connection, a summary review of existing federal legislation relating to corporate financial returns and similar information may be useful:

(a) Canada Corporations Act:

- (i) Section 121F requires the filing in the Department of the Registrar General of a company's annual financial statements prepared in accordance with the detailed provisions of Sections 116 - 121A, inclusively;
- (ii) Sections 73 - 82 require the filing with the Secretary of State of prospectuses and offers to the public involving the issuance of any shares, debentures or obligations of a company, and contain (Section 77) specific and detailed requirements as to the particulars which must be contained in any such prospectus;
- (iii) Section 66 requires the delivery to the Secretary of State of a certified or notarial copy of any instrument creating or evidencing any mortgage or charge securing any issue of debentures, and any mortgage or charge on uncalled share capital, the undertaking or property and other assets of a company.

(b) Corporations and Labour Unions Returns Act:

Part 1 of which requires the annual filing by each company with the Dominion Statistician a Return comprising elaborate particulars as to the capitalization and other financial aspects of the company, including: -

- (1) the amount and description of the authorized capital, and the attributes of each class of shares thereof;
- (2) the number of issued shares of each class, and in relation to each thereof: -
 - (i) the total number of shares held by residents and non-residents of Canada, respectively, and
 - (ii) the number of residents and non-residents, of Canada, respectively, who hold more than 5% of the issued shares, and the number of shares held by each such person, and
 - (iii) general particulars of each corporation holding more than 10% of the issued shares, and the number of shares held by each such corporation;
- (3) general particulars in respect of each federally or provincially incorporated company, more than 50% of whose issued shares of any class are held by the reporting corporation;
- (4) the total amount of debentures issued and outstanding, by each class thereof;

- (5) the total number of shares, by class, and the total amount of debentures, by class, offered in Canada for public subscription during the last preceding 5 years;
- (6) the name, address and nationality or citizenship of each director, and of each officer resident in Canada;
- (7) the total amounts paid or credited, during the year under review, to persons not resident in Canada for various items, such as dividends, and interest, rental and royalty payments, and management, professional and consulting fees and charges, and salaries, fees and other remuneration to officers and directors, all to be shown separately.

Also, under Section 5 of the Department of Consumer and Corporate Affairs Act, the Minister of that Department is given duties, powers and functions over various matters, including corporations and corporate securities and bankruptcy and insolvency, and under Section 6(2) is empowered to undertake research into such matters and to co-operate "with any department or agency of the Government of Canada", all as he sees fit and deems appropriate in the public interest.

11. In regard to the powers of supervision and inspection vested in the Superintendent of Insurance under Sections 5 and 6 of the Bill, we feel that there should be placed on record before this Committee certain of the principles postulated in respect of statutory powers by the Ontario Royal Commission on "Inquiry Into Civil Rights" (McRuer Report), and we submit the following extracts taken from volume 3 thereof: -

Pages 1277 and 1278:

- (i) "Arbitrary powers of investigation ought not to be conferred in any statute."
- (ii) "Where powers of investigation are conferred, they should be subject to conditions precedent which must be satisfied before an investigation can be validly commenced."
- (iii) "Conditions precedent should be expressed with precision."
- (iv) "Wherever possible, conditions precedent should be drawn in objective form."
- (v) "Each provision conferring a power of investigation should contain language prescribing the purpose and permissible scope of the investigation."
- (vi) "The prescribed scope for any given power of investigation should be no broader than is necessary to accomplish the purposes of the Act in question."

- (vii) "The provision defining the scope of an investigation should be stated in precise language."
- (viii) "Where possible, the scope of an investigation should be stated in the objective rather than the subjective form."
- (ix) "Where the scope of an investigation is expressed in the subjective form, it should be defined by the person who initiates the investigation", and "the person who decides the scope should be in a politically responsible position."

Pages 1257 and 1258:

- (i) "Where a statute confers a power of decision, rules or standards to govern the exercise of the power capable of judicial application should be stated in the statute."
- (ii) "Where rules or standards for judicial application cannot be stated and an administrative power to decide on grounds of policy is necessary and unavoidable for carrying out the policy of the statute, the administrative power should be no wider in scope than is in fact necessary."
- (iii) "Where an administrative power is conferred, wherever possible, objective factors or purposes to be taken into account in reaching the decision should be expressed in the statute."
- (iv) "No power to take immediate action should be conferred in such terms that its existence is dependent solely on subjective conditions precedent. There should always be at least an objective requirement that reasonable and probable grounds exist to justify the action."

As previously mentioned in this submission, it has been emphasized during the debate on the second reading of this Bill and in the proceedings heretofore held before this Committee, that the admittedly broad definitions and extensive powers of supervision, inspection and regulation contained in the Bill are required only to enable the administering officials to collate financial data and other corporate information, on the basis of which closely defined and prescribed legislative and regulatory provisions may be formulated, enacted and promulgated, as required. Even assuming the need for a specific and additional statute, which we seriously question, simply to increase the quantitative and qualitative nature of the type of information desired, which is already being massively and regularly produced to various departments of the government, then we suggest that it would be better in principle, and practically more effective, merely to enact appropriate amendments to the existing legislation, and in particular the Canada Corporations Act, which would be applicable to all Part 1 federally incorporated companies or,

preferably, only to such of those companies which are, in the ordinary concept, investment, or finance or acceptance companies. We sincerely believe that, so far as concerns ordinary industrial and commercial companies, the information required to be filed on a regular basis under current laws should be sufficient to enable governmental authorities to determine whether this kind of legislation is required and, if so, to what extent and to what class or classes of companies it should apply. By adopting this approach, some of the more repugnant aspects of the Bill could be obviated, at least until such time as the governmental authorities, after receiving and studying the additional information, could provide and prescribe legislation, (if it was then required), the scope of which could be clearly defined and in which any supervisory, investigatory or regulatory powers could be delineated and circumscribed through the use of appropriate guidelines. It will also have the effect of eliminating the particularly repugnant provisions of Section 22 of the Bill, which gives the Minister [of Finance] virtually unlimited discretionary powers, and the excessive administrative powers of the Superintendent of Insurance in Sections 5, 6 and 23 of the Bill, and would obviate what we consider to be the very confusing and highly undesirable legislative concepts inherent in Sections 3(4) and (5), 4 and 26 of the Bill. Finally, it would mean that the whole of Part II of the Bill could be entirely dropped, in lieu of merely deferred in its effectiveness, which in turn would solve the problem raised and recognized at the First Proceedings before this Committee on January 29, 1969, as to the possibility of the government being embarrassed because of its being powerless during the prescribed two-year deferral period for Part II, to take any remedial action in respect of any adverse situation of which it had become aware, expressly by virtue of information which it had received under the applicable provisions of the Bill. In short, it is our position that it is both unnecessary and unwise for the Government to enact this Bill, or similar legislation, until the problem which it seeks to cure has been fully determined, so that the solution therefor can be fully and adequately defined and implemented with the least possible interference with normal business activity and with the minimum of arbitrary discretionary administrative and executive powers which, to the extent that they are completely unavoidable, should in any event be strictly delimited by well-defined guidelines and definitions.

12. We submit that our contentions in the foregoing paragraph are substantiated, in part, by the remarks made by Mr. Humphrys during the First Proceedings before this Committee on January 29, 1969, in direct response to Senator Hayden's query as to when regulations might be made under Section 22 of the Bill. The point of the question was whether the making of any such regulations would be postponed during the minimum two-year deferral period for Part II of the Bill, and Mr. Humphrys' reply was as follows (at pages 171 and 172):

"Not necessarily for two years, but there will be no regulations until we are in a position to recommend the regulations that seem to be appropriate. The kind of procedure we have in mind in that regard is to consult with the industry and the various classes of companies. The kind of rules and regulations, if any, that are

adopted under that Section would be those that are really modelled on the practices of the better run companies. We will seek the advice and co-operation of the industry with a view to establishing rules and regulations that protect not only the public but the better run portion of the industry from the activities of those companies that carry on in such a way that is damaging."

Our point simply is, why make provision now for the making of regulations in the future in a manner which are or may be totally unnecessary, when the express intention is not to do anything until or unless after consultation with industry it is determined that there is a problem and what sort of remedial action is then required in the circumstances.

In this connection, we refer to the established practice of Ministers of various governmental departments from time to time writing directly to the chief executive officers of a multitude of corporations, soliciting their co-operation in providing the given department with certain information. Where these requests have been made, we believe that there has been a large measure of co-operation on the part of those corporations in furnishing the desired information. We further believe that it may reasonably be assumed that this historic degree of co-operation between industry and governmental authorities will be maintained, undiminished, in the future, to the extent that industry is provided the opportunity to do so.

Finally, both in the interest of expediency and, frankly, for the reason that we would have difficulty in expressing them more precisely, we refer to, and record our agreement with, the comments and criticisms on the Bill made by Senator Phillips in his speech thereon during the course of the debate on its second reading, which is reported at pages 623 - 629 in the November 26, 1968 issue of Hansard.

13. It is neither our intention, nor do we think it is necessary or desirable, to undertake in this submission an extremely detailed or clause-by-clause review of the provisions of the Bill. The Association of Canadian Investment Companies (A.C.I.C.) extended to us the courtesy of furnishing us with a copy of their submission in respect of this Bill, which we have studied. We are generally in agreement with, and concur in, the definitions, comments and recommendations contained in the submission of A.C.I.C., so far as they go. We wish, however, to submit hereunder supplementary remarks, on the assumption that the Government ultimately will decide to proceed to enact this Bill as a separate statute rather than, as suggested above, obtaining the required information more informally, or amending existing legislation, and especially the appropriate provisions of the Canada Corporations Act, so as to provide the Government with such reasonable additional powers of obtaining financial information as may be deemed requisite.

SUPPLEMENTARY REMARKS:

- (A) The definition of "business of investment" should be drawn in such language as will clearly render the provisions of the Bill inapplicable to ordinary commercial and industrial companies, regardless of the nature or extent of their investments made in the ordinary course and as an incidence of conducting their actual principal corporate activities. In the alternative, such definition should provide that it shall be an objective question of fact, or of mixed law and fact, rather than of discretionary or arbitrary subjective determination, as to whether the "business of investment" is the principal or predominant activity of any given company, and that any such determination shall be subject to review by the Courts.
- (B) Alternatively,
- (i) the definition of "business of investment" should be based specifically on a direct and factual relationship between the borrowing of funds from the public and the use of such funds in purely financial transactions which, in their ordinary concept, are investments, as distinct from the employment of such funds in or in respect of the prime corporate activity of an industrial or commercial company; and
 - (ii) the proportion of 25% specified in Section 2(f)(ii) of the Bill should be changed to a proportion of at least 40%, and in lieu of being expressed as a percentage simply of assets, should be expressed as a percentage of the company's total assets, on an unconsolidated basis, and exclusive (a) of cash items, and (b) of bonds, debentures, notes, or other evidences of indebtedness of or guaranteed by a government or a municipality, and of or by any majority-owned subsidiaries of the company, and (c) the shares of any controlled subsidiaries or affiliates of the company, and (d) any loans made by the company under and pursuant to the provisions of Section 15 of the Canada Corporations Act.
- (C) We contend that there would be great merit in structuring the Bill so as to reflect the principal rationale and initial thrust of the proposed legislation, namely, the reporting and gathering of certain financial data and other related corporate information. To that end, we strongly recommend that the provisions of Part II of the Bill (Sections 9 - 20, inclusively) be deleted in their entirety, in lieu of merely deferring their effectiveness as presently provided in Section 30 of the Bill, and that the following Sections also be deleted, or at least substantially revised, so as to eliminate the virtually unlimited discretionary powers which we feel are unwarranted, and the unnecessary confusion and uncertainty which we are convinced would result from their enactment, namely:

- (i) Sections 6 and 7, which relate to inspection;
- (ii) Sections 21 - 26, inclusively, which relate, respectively, to assessments, regulations and notices;
- (iii) Sections 27 - 29, inclusively, which relate to offences and penalties.

By way of dealing more specifically with the above recommendations,

- (1) we feel that Section 21, concerning assessments, should be deleted as we see no reason why the companies to which this legislation may apply, should have to bear any cost in relation to the information reporting and gathering process over and above the significant costs which industry now bears to comply with existing legislation in that respect;
- (2) by way of emphasizing and being consistent with the comments we have made before in this submission eschewing the undefined and unlimited discretionary, and potentially discriminatory, powers contained in this Bill, we strongly urge the deletion of Section 22, (and for that matter, of Section 23), and in that regard endorse the remarks of Senator Connolly (Hansard, January 22, 1969, page 874):

"Section 22 could be intolerable to the various industries concerned. The discretion provided in the Section is unlimited, and inappropriate regulations could retard legitimate and desirable development. No doubt, the residual power of regulation must be vested in the Governor in Council, but too sweeping an authority would not be good. Until the categories of investment companies are clearly demarked, it is impossible to provide proper regulation.";

- (3) we have recommended the deletion of Sections 27 - 29, dealing with offences and penalties, as we feel that, as presently drafted, these provisions would be inappropriately severe for a reporting statute, as opposed to a reporting and policing statute. We understand and agree that to ensure the desired mandatory compliance with whatever reporting requirements are enacted, some reasonable alternate sanctions would have to be provided, although we strongly feel that the ultimate legislation should emphasize voluntary rather than enforced compliance on the basis of continuing consultations between the administering governmental officials and the various segments of industry which the legislation primarily is designed to cover.

- (D) In reference to Section 8 of the Bill, which deals with prohibited loans and investments, and having regard to the definitions of "significant interest", "substantial shareholder", "investment" and "officer" contained, respectively, in paragraphs (a), (b), (d), and (e) of Sub-Section (3) in Section 8, we recommend that these definitions be reconsidered in the light of the prohibitions contained in Section 8(1) and that such prohibitions be revised so that the Bill does not contain prohibitions respecting loans and investments more onerous than those currently imposed under the applicable provisions of Sections 15 and 16A of the Canada Corporations Act. Specifically, in respect of the loans and investments prohibited by Section 8(1)(b) and Section 8(1)(c)(iii), we refer with approval to, and concur in, the following remarks of Senator Connolly (Hansard, January 22, 1969, pages 874 - 875):

"I would like to cite another example of a problem that arises as a result of the presentation of this bill in this form. There are many large enterprises in Canada, that are prosperous, efficient and competitive. They are run by competent Canadian entrepreneurs. These men and these companies see opportunities for Canadian development in various fields.

Let us say that a parent company is a prosperous mining company, oil company or manufacturing company, if you will. It is well regarded, has access to the money markets and enjoys a high reputation. It is sufficiently endowed with assets to facilitate borrowing and to assure both large and small investors of the security of their investment. It sees opportunities, let us say, in the business of light industry, or in real estate development, or in merchandising. It could help develop an industrial park in an area of potential growth. It could erect a modern office building in a progressive city. It could install a shopping centre in an expanding urban area. There is no limit to the opportunities which it could use to accelerate economic growth in the country.

Normally, how does it proceed? It might well incorporate a real estate company. It might incorporate a manufacturing organization. It could set up a company to service hotels, restaurants, ships, aircraft and the like. Any one of these companies might and probably would be wholly owned by the Canadian parent in my example."

"In the language of the act, the parent would have a "significant interest" in each of its individual subsidiaries. Any one of its subsidiaries would have assets and prospects which would give it thoroughly acceptable entrée to the money markets. Any one of its subsidiaries could borrow on bonds, debentures or notes - the traditional ways to which the Governor of the Bank of Canada referred in his speech that I have already mentioned.

But there is a large pool of capital and assets and prospects behind all these subsidiaries that will not require capital at the same time. Some will require additional capital for expansion as circumstances, development and prospects warrant.

Rather than promote each individual subsidiary and have it seek its own capital requirements, the parent can adopt another device; it can incorporate a special subsidiary. The purpose of this subsidiary could be, and would be in this example, to provide the money needed by any of the subsidiaries. The security it offers is well known to the investing public. Usually the capital requirements in this type of case are larger than can be supplied by small individual investors. Institutions usually subscribe to such enterprises, and the amounts are usually beyond the reach of the small investor. Sometimes they reach the level of a half million or a million dollars, or more. Sometimes they are lower, but seldom lower than, say, \$ 100,000.

I shall call this subsidiary the security subsidiary. It is, in fact, a financial intermediary between the operating subsidiary, on the one side, and the market, on the other. It thus becomes a most efficient device for borrowing money, for the marketing of money, for the industrial development to be conducted by any of the operating subsidiaries or, indeed, by the parent company. In fact, in current practice, as this idea has been used in Canada it has attracted and continues to attract more and more Canadian investment in Canadian enterprises.

Who can say this is not a worthy, effective, efficient and economic way of doing business? Is it not clear that time and effort and money are saved, not only for the parent and the subsidiaries, but also the end product of the subsidiary can and should be less costly to the general consuming public."

"Under this bill the security subsidiary, in my example, is prohibited from doing for the operating subsidiaries what the operating subsidiary could do for itself, but at greater cost. The section which prohibits this is section 8(1)(c)(iii). And if the parent had recourse to the services of the security subsidiary, as I describe it, the bill would exclude such recourse under section 8(1)(b) of the act."

* * * *

THE WHOLE RESPECTFULLY SUBMITTED.

Toronto, Ontario,
March 5, 1969.

MOLSON INDUSTRIES LIMITED

D. G. WILLMOT
President

M. McCAMMON
Senior Vice-President,
Corporate Services.

APPENDIX G



The Board of Trade of Metropolitan Toronto

Board of Trade Building, 11 Adelaide Street West, Toronto 1, Canada, Telephone 416 366-6811

February 28, 1969.

The Hon. S. A. Hayden, Q.C.,
Chairman,
and Members of the Senate Banking, Trade
and Commerce Committee,
Senate of Canada,
Ottawa, Ontario.

Mr. Chairman, Honourable Senators:

Re: Bill S-17 - An Act respecting
Investment Companies

The Board of Trade of Metropolitan Toronto has a continuing interest in corporation legislation of a general nature at both the provincial and federal levels. On the other hand, the Board does not ordinarily concern itself with corporation legislation that one might term as special in that such legislation deals with a special class of companies and does not significantly affect the business community at large.

Our original understanding was that Bill S-17 was designed to regulate finance and acceptance companies. However, from a study of the Bill we are of the opinion that the definitions of "investment company" and "business of investment" sweep within their ambit companies whose business operations do not fall within the ordinary concept of a company whose principal stock-in-trade is commercial paper. For example, any company whose main business is manufacturing goods or providing services is by definition included if it borrows money and invests 25% or more of its assets by way of purchase of bonds or shares of other corporations. Many of our most stable companies are holding companies with operating subsidiaries and these will find themselves within the definition of investment company unless the Bill is appropriately amended.

Without going into detail we submit that the provisions of Bill S-17 are unreasonable as they relate to a manufacturer or provider of services. Most disturbing is section 22 of the Bill which provides for regulations in order to secure "a sound financial structure" for investment companies. Nowhere in the Bill is "sound financial structure" defined - perhaps because it is not susceptible to a meaningful definition.

We further note that these regulations will determine levels of paid-up capital and surplus, ratios of outstanding debt to paid-up capital and surplus, liquidity of assets and maximum permissible single investments or loans. This is legislation by regulation which we believe to be entirely wrong in principle. Regulations of this kind would effectively divest the directors of their main function to manage the affairs of a company. Without presuming to speak for finance and acceptance companies, we recommend that appropriate guide lines be spelt out in the legislation as they are in the Bank Act, the Canadian and British Insurance Companies Act, the Loan Companies Act, and the Trust Companies Act. In this connection, we refer also to section 10(2)(b) which would permit the Minister to "impose any conditions or limitations relating to the carrying on of the business of investment that he considers appropriate". A company no matter how sound could be subjected to conditions or limitations designed to further a particular government policy of the day. With all due respect, we oppose provisions conferring on the Minister such unfettered discretion.

We note the exemption provided in section 3(2) of the Bill whereby the Minister may exempt an "investment company", as defined in the Bill, if the "business of investment" it carries on is merely incidental to its principal business. This subsection is consistent with the view that the Bill is not meant to cover companies whose business of investment is merely incidental to their main operations. The Board believes that the intent of legislation should be accomplished within the legislation itself; ministerial discretion should not be the means used.

Section 5(6) of the Bill empowers the Superintendent of Insurance to require the auditor, as well as an officer, of an "investment company" to provide information concerning the financial condition of the company and its ability to meet its financial obligations. Section 27(4) provides that an auditor, who fails to comply with section 5(6), is subject to a fine not exceeding five thousand dollars.

The Board believes the above requirement is wrong in principle. The auditor of a public company is never an officer or employee of that company but is an independent professional accountant answerable only to its shareholders. The responsibility for supplying such information, we submit, should rest only on the company and its officers and employees. There is ample power under this subsection and other provisions of the Bill to obtain such information from them.

In conclusion, Mr. Chairman and Honourable Senators, we make the following submissions:

1. That the definitions of "investment company" and "business of investment" are too broad;
2. That the aforesaid definitions be amended so that they include only those companies which fall within the category of finance and acceptance companies and whose principal stock-in-trade is commercial paper. If borrowing is to be a criterion, it should only be with respect to borrowing from the public. Consideration might be given to the definition of "finance company" contained in regulations under The Securities Act, 1966 (Ontario), a copy of which definition is attached;
3. That the ministerial discretion given by section 10(2)(b) of Bill S-17 not be conferred;
4. That the minimum standards of what constitute a "sound financial structure" be set forth in the Bill rather than be provided by regulation;
5. That the Superintendent not be empowered to require the auditor of an investment company to provide information concerning the financial affairs of that company.
6. The Board supports the principle of Bill S-17 as it applies to finance and acceptance companies.

Respectfully submitted,

Wilson E. McLean, Q.C.,
President.

J. W. Wakelin,
General Manager.

Regulation Made Under The Securities Act, 1966

Reg. 101/67 "8(1)(c) 'debt security' means any bond, debenture, note or other obligation of a company whether secured or unsecured;

(d) 'finance company' means a company, its subsidiaries and affiliates whose preferred shares or debtsecurities are offered to the public and is

(i) a company, its subsidiaries or affiliates for which a material activity involves,

a. purchasing, discounting or otherwise acquiring promissory notes, acceptances, accounts receivable, bills of sale, chattel mortgages, conditional sales contracts, drafts, and other obligations representing part or all of the sales price of merchandise, and services.

b. factoring, or purchasing and leasing personal property as part of a hire purchase or similar business....."

APPENDIX H

SUBMISSION

of the

FEDERATED COUNCIL OF SALES FINANCE COMPANIES

to the

SENATE COMMITTEE

on

BANKING, TRADE AND COMMERCE

regarding

BILL S-17

March 5, 1969

1. The Federated Council of Sales Finance Companies welcomes the opportunity to make a submission to your Committee and trusts that its contribution will further your deliberations on Bill S-17.
2. Federated Council is the national association of sales finance companies operating in Canada. Its members account for approximately 70% of the sales finance credit extended to consumers by the industry and 90% of the instalment credit provided by these companies to business for machinery and equipment purchases. In addition, the sales finance industry provides Canadian automobile dealers and retailers generally with specialized wholesale accommodation for inventory financing. A list of Federated Council's member-companies appears as Appendix 1 to this submission.
3. Federated Council understands and is in sympathy with the concern which has led to the introduction of Bill S-17. The members of our group can be counted upon to support any governmental action which will have the effect of creating greater confidence in the financial health and stability of companies which, by reason of the nature of their business operations, borrow money in large amounts from the public (Appendix 2). We share the concern already expressed during the hearings of this Committee that any proposed legislation in this area should be adopted only after legislators have been able to assure themselves that companies will not be unduly restricted nor will flexibility of operations be impaired.

4. Bill S-17 has as its object the control of investment companies for the protection of investors. This objective is laudable but if it is to be attained through legislation, we must first inquire as to the type of protection which investors want and need and whether the proposed control will provide it. We acknowledge that investors in our industry require access to detailed information and data. If the proposed legislation will make the provision of such information and data mandatory, the legislation will be beneficial. If the legislation provides an excess of government regulation which would hamper the growth and flexibility of the industry, it will be to that extent harmful.
5. In this connection, we refer to the Report of the Royal Commission on Banking and Finance, 1964, at page 357:

"In our view, the goal of protecting the public against loss can best be achieved with three basic legislative safe-guards: adequate disclosure, competent supervision, and legal powers, giving the authorities the right to force the correction of unsound or careless practices and to prosecute those engaged in fraudulent or criminal activities. Complete and continuing disclosure of the affairs of institutions should enable the public without unreasonable cost and inconvenience to obtain the necessary information about the reputation and strength of any financial concern, while competent and frequent self-regulation under the ultimate supervision and inspection of government is the best safeguard against an institution becoming insolvent although, of course, not a guarantee that it will not do so."

6. With this in mind, we have come to the conclusion that Bill S-17 requires considerable amendment if it is to accomplish its purpose. In its present form the Bill provides for disclosure, licensing and regulation. The disclosure requirements meet with our approval but we feel that the regulatory power created by Section 22 is far too broad.

7. The Report of the Royal Commission on Banking and Finance, at page 358, points out the danger of over-regulation:

"Even if the legislation is so carefully drawn that such consequences are avoided for the moment, it is certain that the community's needs will change. Although carefully drawn legislation could be modified from time to time, change and innovation will be impeded and institutions will be unable to become more efficient by adding to their services when they could otherwise do so at economic rates. In short, the financial system will not be able to do its job as well as it might. Moreover, if the terms on which some institutions are able to compete for funds are restricted by limits on their borrowing powers or on their assets and earnings, there is an added danger that changes in monetary policy will have a differential impact on their ability to attract funds and to meet the needs of borrowers who rely particularly on them."

8. We suggest that those who favour further regulation of companies in our industry do not have sufficient confidence in the salutary effects of market-place disciplines. In the past few years, there have occurred a number of collapses, as a result of which investors lost considerable amounts of money. Large corporate investors, as a result of such collapses,

immediately reacted. Indeed, an understandable over-reaction on the part of investors may have led to the difficulties which other companies subsequently experienced. In response, companies in our industry have in their own interests, done all in their power to provide maximum disclosure to investors so as to ensure the maintenance at all times of a satisfactory level of confidence in the health of our industry as a whole. It is our experience that considerably more care is now taken by investors in the selection of securities for investment of their funds. As the above shows, market place disciplines have been and are effective and do constitute a satisfactory corrective.

9. Again we refer to the Report of the Royal Commission on Banking and Finance, at page 214:

"Whatever their own views about the form of their borrowing, the finance companies' freedom is restricted by the terms of trust deeds covering their notes, debentures and other debt. Although the companies are not subject to any legislative borrowing limits, apart from the implied or specific prohibition on taking deposits, the underwriters and the investors on whom they rely for funds in effect impose what they consider a sound capital structure ... The limits on capital structure, together with the lenders' scrutiny of the receivables put up as security for the notes and the normal examination of prospectuses by the securities commissions, provide the main protection to those lending to finance companies. So long as the companies draw their funds from well-informed investors able to judge their soundness, or even from the general public through the securities markets where a satisfactory prospectus is required,

there does not appear to be any reason to impose inspection and supervision comparable to that applying to banks, trust and loan companies, credit unions and other institutions which borrow generally from the public by means of deposits."

With reference to the above, it should be noted that the preponderance of securities created by companies in our industry is held by knowledgeable, experienced investors, capable of measuring risk (Appendix 3). These sophisticated investors impose capital structure and borrowing restrictions on borrowing companies and now keep such restrictions constantly under review to ensure the protection of their interests, thereby performing from their vantage-point the function of supervision and control envisioned under this Bill. These investors tailor-make their restrictions to individual companies whereas proposed control by government would of necessity be of general application, thus either imposing rigidity or unnecessary and undesirable restrictions on well-managed financial institutions in our industry, or be so loose as to be useless. Each company in our industry is unique, each has its own particular interest and expertise and it would be difficult for anyone other than the sophisticated investor to say what is sound practice for any particular company.

10. In its present form, Bill S-17 places upon governmental officials the heavy responsibility of deciding whether a given company should be allowed to continue its operations and under what conditions. We seriously question the advisability of reposing that responsibility with government except in cases where fraud, deceit or failure to provide required information are

suspected. When governmental officials are given such broad regulatory powers as are proposed in the present Bill, including powers to suspend the operation of a company, place it in bankruptcy, or to dissolve it, there may well be an implication that if a company should find itself in financial difficulties and unable to meet its obligations, government authorities will have been at fault either for failing to put the company out of business earlier or for doing so at an inappropriate time.

11. Mention has been made above of the efforts of our industry on its own initiative to provide full information to the investing public concerning securities offered by our industry. Recognized forms of disclosure are now in existence and insisted upon by the investor as well as by provincial securities commissions. We suggest that these recognized forms of disclosure provide investors with the information they require to determine whether any offered security presents an acceptable risk.
12. If government wishes to provide a measure of additional investor confidence beyond full disclosure, then we urge consideration of establishing lines of last resort credit for those registered companies that would benefit thereby. At the present time, the chartered banks perform a function not unlike a lender of last resort to companies in this industry. However, since the revision of the Bank Act, chartered banks have become, and understandably so, our major competitors in an intensified way. Investors should be concerned that, in the future, chartered banks may be less willing and able to perform the function of lender of last resort. In any event, as a

matter of principle, the change in competitive structure suggests a potential danger that needs to be corrected. The provision of credit lines of last resort should be provided through the Bank of Canada. The existence of such credit lines would not only alleviate the potential problem with respect to financing through competitors but would also increase the confidence of investors in the ability of our companies to meet their obligations as they mature.

13. Having indicated above our general view with respect to the proposed legislation, we should like to deal specifically with certain sections of the Bill in its present form.

PART I

14. Section 5(1) requires investment companies to file statements of their condition and affairs within two months after the end of the relevant fiscal year. In some cases this may be impossible to comply with due to delays in obtaining audited information and data. The Ontario Securities Act provides 170 days for filing of information and we suggest a similar period for the purposes set forth in Section 5(1). We would hope that companies would not be put to additional time-loss and expense by requiring the preparation and filing of forms other than those presently required to be filed with provincial authorities.

15. Section 5(2) requires that the annual statement be verified by oath of two persons being, respectively, a director and officer of the company. As the information would in most cases be based on reports, records and data prepared for and submitted to the verifying officer and director, their verification could only be given on the basis of knowledge, information, and belief. An appropriate amendment should be made so as to permit officers and directors to verify on this basis.
16. Section 5(4) permits the government authority to require the preparation and filing of consolidated statements covering one or more subsidiaries. Presently companies consolidate or refrain from consolidating on the recommendations of their financial advisors, and consolidation is usually avoided when the resulting statement would present an inaccurate picture of the true financial condition of the parent and subsidiary. We feel therefore that government authorities should not have the power to dictate whether or not consolidated statements are to be prepared, but should have the right to receive consolidated statements when consolidated statements are in fact prepared.
17. Paragraph 7(b) prohibits the making of false or misleading statements either orally or in writing to an inspector. We suggest the introduction of the word "knowingly" as in many cases information being conveyed to the inspector by the person involved will be based on information given to such person by others.

18. Section 8(1) presents considerable difficulty. Companies in our industry are in the business of making loans and accordingly it is difficult to accept a restriction which would oblige directors and officers of member-companies to borrow elsewhere when such borrowings from their own companies would be normal and reasonable in the circumstances. At the same time, we recognize the desirability of prohibiting loans which in amounts or relevant circumstances could create a hazard for the investing public. We therefore suggest that the prohibition in Section 8(1) be subject to a proviso which would permit loans to directors and officers if done in the normal course of business, if a similar lending plan is offered to all employees, and if the director or officer concerned owns or controls not more than 1% of the company's equity. It should be noted that the Bank Act permits loans to bank officers and directors within specified limits.

PART II

19. Section 12(1) provides for the mandatory dissolution of an investment company in the circumstances set forth in the sub-section. Such mandatory dissolution would result in the assets of the company becoming the property of the Crown under law relating to bona vacantia and escheat. It is our view that the assets should be made available to creditors before dissolution takes place.

20. In Sections 14(1) and 15(1) we suggest that the words "inadequately secured" be changed to read "inadequately provided for". The word "secured" is somewhat ambiguous in the context of the sub-sections and as the borrowings of many companies in the industry are on an unsecured basis, we feel that the ambiguity should be removed by using another word or expression.

PART III

21. Section 21 places the cost of administration of the Act upon the companies which will be registered thereunder. The benefits of the legislation have general application and the parties intended to be protected will be investors, large and small throughout Canada. We therefore suggest that the cost of administration should be borne out of general revenues on the theory that those who reap the benefit should pay the cost. As the number of companies falling under the Act may be relatively few while the regulatory function to be performed under the Act as presently framed is substantial, the cost may be considerable for those companies involved while of small significance if the cost is borne by the general public for whose benefit it will be enacted.
22. Section 22 provides for the making of regulations. The powers given in this Section are extremely broad, extending to such matters as levels of paid-up capital and surplus, ratios of outstanding debt to paid-up capital and surplus, liquidity of assets, maximum permissible single investments or

loans and prescribing rules for valuation of assets and liabilities. The regulatory power permits too great an interference with the sound of management of companies. In our industry, it is quite possible for companies of comparable size, engaging in similar business activity and having capable management, to require different ratios of outstanding debt to paid-up capital and different degrees of liquidity of assets. We consider that the best protection an investor can have is full information on all matters of importance and that the arbitrary imposition of further government regulation within these areas is unnecessary and undesirable. As previously stated, the tailor-made constraints developed and continuously reviewed by the knowledgeable and experienced investor himself, with his own interests at heart, provide the most effective kind of investor protection for all investors. Government regulation may not only be redundant, but ineffective and possibly harmful.

23. To the extent that regulatory powers will be given in the Act and exercised in due course, the effect of such regulations should be dependent upon reasonable notice, given to each registrant. The notice should include a copy of the relevant regulation.
24. Section 23(a) and (b) permits government authorities to prescribe forms for the purposes of the Act and Regulations, and the information to be contained in an annual statement. In our view these matters should be matters of regulation and should fall within Section 22 of the Act.

25. Section 27(3) prescribes penalties for directors, officers, servants or auditors who do certain acts enumerated therein. The penalty is imprisonment for a term not exceeding two years. There may be circumstances where such a penalty would be too harsh, particularly in the case of inadvertent error and we would accordingly recommend that provision be made for fines in lieu of imprisonment.
26. We would suggest the introduction of a further provision in the Act under which an appeal procedure would be provided with respect to decisions made by the Minister under Section 10 and Section 15. These sections relate to the issuing of certificates of registry and the withdrawal of such certificates. It seems appropriate to us that such decisions be appealable.
27. Individual company information should be treated as confidential. To the extent that information supplied to government authorities is compiled on an industry or class basis, such compiled information should be made available to all registered companies within the industry or class.
28. In conclusion, may we point out that this legislation varies from securities legislation now in force in various provinces by reason of the increased control which the Bill proposes to give to government authorities. We are in favour of legislation which will require the degree of disclosure which investors need and which will create sufficient regulatory powers to enforce the disclosure requirements. We do not however approve of regulatory powers which would unnecessarily interfere with management of companies in our industry.

29. We urge therefore that this Bill be given very patient and thorough consideration before it is enacted in any form.
30. We assure you of our continuing co-operation in your efforts to produce beneficial legislation with respect to investment companies. If Bill S-17 or any alternative legislation is enacted, we will look forward to consultations with government authorities when implementation of regulatory powers is being considered.

APPENDIX

TABLES

MEMBERS OF
FEDERATED COUNCIL OF SALES FINANCE COMPANIES

Acadia Acceptance Company Limited - Vancouver
Ace Finance Corporation Limited - Montreal
Acme Acceptance (London) Limited - London
Associates Acceptance Company Limited - Toronto
Avco Delta Corporation Canada Limited - London
British Acceptance Corporation Ltd. - Vancouver
Canadian Acceptance Corporation Limited - Toronto
Carling Acceptance Limited - Ottawa
Chrysler Credit Canada Ltd. - Toronto
Citizens Finance Company Limited - Windsor
Commercial Credit Corporation Limited - Toronto
Danforth Discount Limited - Toronto
Empire Acceptance Corporation Limited - Vancouver
Finance Locale Inc. - Mont Joli, P.Q.
Ford Motor Credit Company of Canada, Limited - Oakville
Founders Acceptance Corporation Limited - Winnipeg
Frontier Acceptance Corporation Limited - Willowdale, Ontario
General Finance Corporation Ltd. - Calgary
Industrial Acceptance Corporation Limited - Montreal
Laurentide Financial Corporation Ltd. - Vancouver
Ocean Company Limited - Windsor, Nova Scotia
Pacific Finance Acceptance Company Limited - Toronto
Robertson Finance Co. Ltd. - New Westminster, B.C.
Seaboard Finance Company of Canada Limited - Toronto
Signature Finance Ltd. - Edmonton
Traders Group Limited - Toronto
Triad Acceptance Company - Toronto
Union Acceptance Corporation Limited - Toronto
United Dominions Corporation (Canada) Limited - Toronto

BALANCE SHEET DATA OF THE TEN LARGEST SALES FINANCE COMPANIES

FISCAL YEAR END, 1953 - 1966

THOUSANDS OF DOLLARS

ASSETS	1953	1954	1955	1956	1957	1958	1959	1960	1961	1962	1963	1964	1965	1966
Cash	26,944	27,488	19,836	27,829	42,182	32,950	40,894	31,104	31,608	31,317	25,820	34,534	23,379	39,900
Marketable securities				26	106	16,219	85,024	95,005	71,303	61,836	66,888	81,846	57,087	55,521
Notes and accounts receivable:														
Retail	654,503	602,743	708,220	940,879	967,246	916,733	1,029,269	1,111,270	1,040,551	1,169,714	1,313,714	1,539,125	1,693,504	1,619,023
Wholesale	135,216	101,375	145,786	199,341	205,086	198,840	201,799	237,032	195,496	253,053	308,319	265,003	446,136	377,859
Real estate loans	10	22	13	25		29	139	99	106	7,007	6,770	26,102	48,028	43,786
Capital loans to dealers	2,866	3,422	5,334	5,813	6,419	7,070	8,438	10,968	14,035	14,061	14,808	16,606	18,624	34,536
Sundry accounts receivable	2,090	3,719	3,585	3,701	4,942	3,684	4,733	6,876	5,177	3,765	5,747	4,618	4,540	13,758
Total receivables	794,685	711,281	862,938	1,149,759	1,183,693	1,126,356	1,244,378	1,366,245	1,275,365	1,447,600	1,651,358	1,853,454	2,210,832	2,184,383
Less: Provision for doubtful accounts	8,384	8,079	9,210	10,981	11,960	12,060	13,208	14,064	14,826	15,610	16,665	18,589	20,959	22,472
Net receivables	786,301	703,202	853,728	1,138,778	1,171,733	1,114,296	1,231,170	1,352,181	1,260,539	1,431,990	1,634,693	1,834,865	2,189,873	2,161,911
Investments in:														
Subsidiary companies	18,240	25,613	31,842	47,266	56,017	59,468	88,773	128,828	192,754	254,018	344,556	395,805	458,792	591,475
Associated companies	1	1	0	650	598	621	1,714	4,851	9,423	9,707	3,075	3,979	4,882	6,557
Investment in fixed assets to produce rental income														
Fixed assets	3,283	3,210	3,453	4,160	4,555	4,642	4,970	4,942	5,186	5,142	4,875	5,894	7,277	6,965
Leasehold improvements	256	339	402	431	519	583	604	666	784	723	693	649	680	675
Unamortized cost of acquisition of borrowed money														
Other assets	2,389	2,630	2,386	3,517	7,229	4,904	6,811	7,453	6,937	7,851	8,362	14,109	16,540	17,376
	1,209	1,492	1,651	1,007	2,612	2,713	2,751	2,614	2,328	4,090	4,415	5,234	5,918	4,408
TOTAL ASSETS	838,623	763,975	913,530	1,224,037	1,285,866	1,236,783	1,463,075	1,627,989	1,581,957	1,808,771	2,100,930	2,383,237	2,772,884	2,809,190

Source: The Federated Council of Sales Finance Companies Survey

Appendix 2 (Continued)

LIABILITIES	1953	1954	1955	1956	1957	1958	1959	1960	1961	1962	1963	1964	1965	1966
Bank borrowings	191,124	103,916	172,419	242,576	155,885	182,269	194,359	163,340	109,031	127,247	177,119	157,451	271,544	230,556
Other demand loans					681	470	3,852	996	425	547	1,632	716	793	7,659
Short term notes	211,976	167,352	237,245	330,753	409,333	295,516	424,227	489,132	409,043	532,516	655,629	842,178	782,062	671,312
Long term notes - more than 2 years to maturity when issued	139,847	156,216	155,790	198,323	227,328	231,448	276,204	336,019	375,880	413,391	467,894	564,542	610,687	676,663
Bonds and debentures	104,117	128,756	124,991	153,856	192,869	199,516	208,530	250,840	264,534	276,386	271,956	265,669	289,205	346,239
Total debt	647,064	556,240	690,445	925,508	986,066	909,219	1,107,172	1,240,327	1,158,913	1,350,087	1,574,230	1,830,556	1,954,291	1,932,429
Accounts payable	28,470	30,407	22,649	41,869	32,077	38,326	32,509	39,874	58,530	70,437	93,425	87,820	140,133	131,098
Dealers' credit balances	32,970	33,855	36,211	43,485	46,243	44,411	44,401	42,457	39,538	37,164	37,596	38,362	38,653	40,381
Advances from parent or associated companies	5,560	5,000		6,102			10,000	10,000	11,000	11,025	12,025	12,025	183,197	201,519
Other liabilities	157	123	128	209	2,278	1,212	1,363	1,428	1,746	1,909	2,617	3,301	3,817	1,971
Unearned service charges	40,761	40,401	50,356	68,800	76,595	78,273	92,824	104,050	98,129	108,157	119,735	135,795	146,756	156,363
Shareholders' equity														
Preferred stock	17,989	18,651	19,867	30,167	29,650	34,892	35,138	34,551	40,014	40,788	48,788	52,482	74,768	88,325
Common stock	37,194	46,179	56,520	64,252	62,183	65,487	68,304	74,104	83,708	88,918	102,254	105,249	108,364	114,810
Capital surplus	354	402		238	679	1,205	1,570	1,941	2,364	2,834	3,784	3,841	3,981	5,359
Earned surplus	28,104	32,717	37,354	43,407	50,095	63,508	69,344	78,536	87,020	95,472	103,813	111,497	116,490	133,105
Contingent reserves						250	500	721	995	1,980	2,663	2,309	2,444	1,830
Total capital accounts	83,641	97,949	113,741	138,064	142,607	165,342	174,806	189,853	214,101	229,992	261,302	275,378	306,047	343,429
TOTAL LIABILITIES AND CAPITAL	838,623	765,975	913,530	1,224,037	1,285,866	1,236,783	1,463,075	1,627,989	1,581,957	1,808,771	2,100,930	2,383,237	2,772,884	2,809,190

Source: The Federated Council of Sales Finance Companies Survey

Appendix 2 (Cont'd)

LIST OF COMPANIES
WITHIN THE
"TEN LARGEST SALES FINANCE COMPANIES IN CANADA"

Avco Delta Corporation Canada Limited
Canadian Acceptance Corporation Limited
Chrysler Credit Canada Ltd.
Commercial Credit Corporation Limited
General Motors Acceptance Corporation of Canada Limited
Industrial Acceptance Corporation Limited
Laurentide Financial Corporation Ltd.
Traders Group Limited
Union Acceptance Corporation Limited
United Dominions Corporation (Canada) Limited

SURVEY ¹ OF VALUE OF DEBT BY HOLDER
AS AT DECEMBER 31, 1968

<u>Security Holder</u>	<u>Millions of Dollars</u>	<u>Per Cent of Total</u>
1. Bank (including loans)	131.4	9.1
2. Insurance companies	310.7	21.4
3. Trust companies	158.3	10.9
4. Other financial institutions (including investment dealers)	<u>273.1</u>	<u>18.9</u>
A. Sub-total of financial institutions	873.5	60.3
5. Corporations n.e.s.	<u>309.0</u>	<u>21.3</u>
B. Sub-total of corporate holders	1,182.6	81.6
6. Other registered holders	47.6	3.3
7. Unregistered holders ² .	<u>219.4</u>	<u>15.1</u>
C. Total	<u>1,410.8</u>	<u>100.0</u>

Note 1. The FCSFC survey was instituted on February 21, 1969. The responding companies were:

Associates Acceptance Company Limited
Canadian Acceptance Corporation Limited
Commercial Credit Corporation Limited
General Motors Acceptance Corporation
Laurentide Financial Corporation Ltd.

Traders Group Limited
Pacific Finance Acceptance Corporation Limited
Union Acceptance Corporation Limited
United Dominions Corporation Canada Limited

A tenth company was unable to respond with precise data within the time limitation but estimated that more than 90% of its securities would be held by corporations - financial and non-financial. (See sub-total B.)

With regard to smaller sales finance companies, the smaller the company the more completely does it rely on bank credit only. Therefore, the effect of including the total membership of the Federated Council in the survey would be to increase the importance of financial institutions as holders of the industry's debt.

Note 2. "Unregistered holders" refers to a class of investors in long term debentures of sales finance companies whose names are registered with third parties, usually a trust company, but not with the issuing company. It is estimated that more than 50% of the amount of securities held by this class (or approximately 8% of the total debt) is in fact held by corporations and financial institutions.

APPENDIX I

GEORGE WESTON LIMITED

SUITE 1500/25 KING STREET WEST, TORONTO, CANADA. PHONE: 363-2301

OFFICE OF THE PRESIDENT

February 3, 1969

Senator Salter A. Hayden
The Senate
Parliament Buildings
Ottawa, Ontario

Dear Senator Hayden:

We wish to convey through you our concern and objection to Bill S-17 entitled "An Act Respecting Investment Companies".

We understand that the purpose of the bill is to establish a system of reporting and inspection for companies that are engaged in finance operations.

However, as drafted, the legislation would apply to a company which, for prudent business reasons, carries on its industrial operations through subsidiaries rather than as divisions of one company. A substantial part of our operations are conducted through subsidiaries which are engaged in large industrial commercial activities in every province in Canada, under local management.

We and our subsidiaries are required to comply with a multitude of statutes regulating business activities, including provincial securities statutes and company law statutes. We are led to believe that additional legislation is being contemplated by federal authorities in the field of company law and securities law which will further regulate business activities of federal companies.

We consider that neither our company nor our subsidiaries are "finance companies" which should be subject to Bill S-17.

Continued

Senator Salter A. Hayden

February 3, 1969

We urge that the definition of "investment company" contained in the bill be drafted to exempt from its application a company which is engaged in industrial commercial activities through subsidiaries.

We would be pleased if you would let us know if you consider it desirable for us to make further and more detailed comments in connection with this matter.

Yours very truly,

A handwritten signature in dark ink, appearing to read "G. E. Creber", written in a cursive style.

GEC:dc

G. E. Creber
President

Cable Address: "ATHLETE"
Telephone: 932-6161 (Area Code 514)

APPENDIX J

P.O. BOX 6500
MONTREAL 3

IMPERIAL TOBACCO COMPANY OF CANADA LIMITED

3810 ST. ANTOINE STREET
MONTREAL 30

February 26, 1969

The Honourable Lazarus Phillips, O.B.E., Q.C., LL.D.,
One Place Ville Marie,
Montreal 113, P.Q.

Dear Senator Phillips -

We have studied Bill S-17, an Act respecting Investment Companies, and we strongly support the arguments that you put forward in your speech of November 26th in the Senate. We feel this Bill should be revised in such a manner that industrial companies will be excluded.

Imperial Tobacco Company of Canada Limited is primarily a manufacturing company. Its operations in tobacco, as well as other manufacturing activities in which it is engaged, are carried out by itself and its manufacturing subsidiaries. Presently, we do not fall within the definition of Section 2(f) of Bill S-17. However, if our diversification programme in the future were to be financed by borrowed funds, we might well find ourselves eventually categorized as an investment Company.

We do not believe Bill S-17 is intended to restrict the legitimate expansion of manufacturing companies such as ourselves, but rather it appears that its immediate objective is to control and regulate finance and acceptance companies. Therefore, we strongly suggest that the Bill be amended to meet these objectives and exclude industrial companies.

Regarding subsection 2 of Section 20 of Part II, we most heartily endorse your criticisms. It seems incongruous that the Superintendent should have the power to recast financial statements that have been approved by a Board of Directors, certified by a qualified firm of auditors, possibly accepted by income tax authorities, etc.

Please be assured of our best wishes for success in your endeavours to have Bill S-17 amended. In the hope that it may add some weight to your arguments, we are taking the liberty of sending a copy of this letter to the Senate Committee on Banking and Commerce.

Yours sincerely,


W.H. Booth,
Vice-President - Finance.

✓ c.c. Senate Committee on Banking and Commerce



First Session—Twenty-eighth Parliament
1968-69

THE SENATE OF CANADA
PROCEEDINGS
OF THE
SENATE COMMITTEE
ON
BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 23

WEDNESDAY, MARCH 5th, 1969

First Proceedings on Bill S-29,

intituled:

"An Act respecting the production and conservation of oil and gas in the
Yukon Territory and the Northwest Territories".

WITNESSES:

Canadian Petroleum Association: D. E. Lewis, Q.C., member, Legal
Committee and L. K. Walton, member.

OBSERVERS:

Department of Indian Affairs and Northern Development: Dr. H. W.
Woodward, Chief, Oil and Mineral Division, Northern Economic
Development Branch; R. R. McLeod, Administrator, Oil and Gas
Section, Northern Economic Development Branch.

THE SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Lang
Aseltine	Desruisseaux	Leonard
Beaubien (<i>Bedford</i>)	Gelinas	Macnaughton
Benidickson	Giguère	Molson
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Inman	Welch
Connolly (<i>Ottawa West</i>)	Isnor	White
Cook	Kinley	Willis—(30)

Ex officio members: Flynn and Martin

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, February 27th, 1969:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Everett, seconded by the Honourable Senator Sparrow, for the second reading of the Bill S-29, intituled: "An Act respecting the production and conservation of oil and gas in the Yukon Territory and the Northwest Territories".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Langlois moved, seconded by the Honourable Senator McDonald, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, March 5th, 1969.

(24)

At 11.10 a.m. this day the Senate Committee on Banking, Trade and Commerce met to consider Bill S-29, "An Act respecting the production and conservation of oil and gas in the Yukon Territory and the Northwest Territories".

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien, Benidickson, Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Flynn, Gelinas, Giguère, Haig, Hollett, Inman, Isnor, Kinley and Savoie. (20)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Upon motion, it was *Resolved* to print 800 copies in English and 300 copies in French of the proceedings of the Committee on the said Bill.

The following witnesses were heard:

CANADIAN PETROLEUM ASSOCIATION:

D. E. Lewis, Q.C., member, Legal Committee.

L. K. Walton, member.

The following observers were present:

DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT:

Dr. H. W. Woodward, Chief, Oil and Mineral Division, Northern Economic Development Branch.

R. R. McLeod, Administrator, Oil and Gas Section, Northern Economic Development Branch.

At 11.50 a.m. the Committee adjourned further consideration of the said Bill until Wednesday, March 12th, 1969.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

THE SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

EVIDENCE

Wednesday, March 5, 1969.

The Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-29, respecting the production and conservation of oil and gas in the Yukon Territory and the Northwest Territories, met this day at 11.30 a.m. to give further consideration to the bill.

Senator Salter A. Hayden (Chairman) in the Chair.

The Chairman: We have another bill to consider this morning, at least to the extent of hearing a delegation make a submission. We have Bill S-29 before us, dealing with the production and conservation of oil and gas in the Yukon and Northwest Territories. I take it that it is the desire of the Committee to have the proceedings printed.

Hon. Senators: Agreed.

Upon motion, it was *resolved* that a verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 copies in French be printed.

The Chairman: This morning we will hear the submissions of the Canadian Petroleum Association. We will have to discuss with their witnesses how far they wish to go this morning, because the Deputy Minister who wished to appear this morning is unfortunately out of town for this week on Government business, and I assured him that we would not close our proceedings without giving him the opportunity of being heard.

This morning we have Mr. D. E. Lewis, Q.C., Mr. L. K. Walton, Mr. J. B. McDonald and Mr. J. M. MacNicol. The submission on behalf of the Canadian Petroleum Association has been distributed.

Now, Mr. Lewis, you are going to speak for the group. Would you just tell the Senate Committee who the other members are and what their positions are, and then you can go ahead with your submission.

Mr. D. E. Lewis, Q.C., Member of the legal Committee, Canadian Petroleum Association: Honourable Chairman and honourable senators, the Canadian Petroleum Association is being represented by myself, and I will give you some background in a moment, and Mr. Ken Walton, who is the Chairman of the Northwest Territories Committee of the Canadian Petroleum Association. He is a land man with 23 years' experience with Imperial Oil Limited and he has been a representative on a number of land committees of the association throughout the years. Mr. Jim McDonald is a petroleum engineer, a graduate of the University of Oklahoma, and has been Chairman of the Saskatchewan Technical Committee of the Petroleum Association, the Vice-Chairman at the present time of the Central Reserves Committee, the Chairman of the Regulation Review Committee for Alberta during the last two or three years and Chairman of the Saskatchewan Regulation Committee. New regulations were issued in 1969 in Saskatchewan and he was on the committee that worked with the Government on those, just as he was a member of the committee which worked with the Alberta Government when their regulations were put out in 1968. Mr. Jim MacNicol is the manager of the Ottawa office or division of the Canadian Petroleum Association and is manager of the pipeline division. He has had some 13 years in industry and is located in Ottawa and can be reached by telephone at any time anybody wishes to discuss any oil problems with him.

I have been employed with Imperial Oil, with a slight exception, for a period of 20 years. I am co-author with Professor Andy Thompson of a three-volume legal text on Canadian oil and gas. The latter two volumes deal with legislation, and this text has become a service. In addition to that, I represented industry in Australia at the time they were writing their off-shore code. I was there for a little over a year and in preparation was exposed to international law as it related to conservation and tenure. That may

give you some help as to my own background. I am a member of the Legal Committee of the Association.

Senator Connolly (Ottawa West): For the record, those who know Mr. Lewis in connection with the Canadian Bar Association know that he is one of the leaders of that association in respect of the law as it relates to this industry.

The Chairman: I think we have certainly established the competency of the delegation before us this morning, Mr. Lewis. Are you going to make a submission supplementing the brief you have filed?

Mr. Lewis: Yes, sir. I have one or two observations to make.

I would first like to acquaint the senators with the Canadian Petroleum Association. I think the background might help. The Canadian Petroleum Association is a non-profit organization consisting of more than 200 companies engaged in the oil and gas industry in Canada. About half of the membership is directly involved in the exploration, development, production and transportation of crude oil and natural gas and gas products, and the other half is engaged in activities ancillary to exploration and production. So that the membership represents the working-interest owners as distinct from the royalty owners of approximately 97 per cent of Canada's oil and gas production.

The association has a division in each of British Columbia, Alberta and Saskatchewan; these are separate entities dealing with the problems in those provinces. So far as common problems are concerned, or problems of the Northwest Territories and the Yukon, those are looked after by a central committee which has representatives on it from each of the provinces, and it is headed by a board of governors. The work, as in other major organizations in Canada, is done through a committee system. For example, we have a Legal Committee, there are land committees, Northwest Territories committees, reserve committees and that sort of thing.

We appreciate very much the fact that the bill was put over for two weeks so that we could be represented, and after we received the copy of the bill it was sent out to the various committees that deal with the Northwest Territories and was considered by them. The short brief that we submitted to this

committee was the result of the work of those committees as co-ordinated and discussed with the Board of Governors.

In the main we are in agreement with the intent and objects of the Act, namely that of conservation. We think it will be achieved. The Act as I think you know, is similar so far as powers of conservation are concerned with bills that you will find in the western provinces. There are some differences, but the differences, I think, are mainly to meet the problems of the territories and the structure of the Department of Indian Affairs and Northern Development. I might say again that we have over the years discussed conservation with that department.

We made clear by representations the points we think should appear in the bill and there has been complete accordance between the two groups on the technical phases of conservation.

As to the bill itself I think we made clear in this brief the majority of points which we think should either be reconsidered or amended. I don't know whether I should go over any of those.

The Chairman: Well, they will be filed. But I think there are a few of them that it might be well to refer to. The first one is on page 2 where you suggested that the powers to make regulations should be extended to provide for regulations in relation to processing and transportation as well. Now section 12 deals with the regulatory powers of the Governor in Council in connection with the exploration and drilling, production and conservation of oil and gas. The general authority of the bill is broad enough to cover that area, but you might need a definition for "processing". What does it mean?

Mr. Lewis: Generally speaking, we are thinking of gas plants and the processing of crude oil. Generally when gas comes out of the ground it has to be made marketable and that is normally done through a scrubbing or processing plant where sulphur and other impurities are taken from the gas and they in turn become by-products. They are then sold. Now when you read the particulars of the powers that are granted on pages 7 and 8 you will find that they really do cover processing. I think it is section 12 (p) on page 8 prescribing minimum acceptable standards.

Senator Prowse: Is that not also covered by paragraphs (i) and (j)?

Mr. Lewis: Paragraphs (i) and (j) would deal with that too. All we are saying here is that when you read the powers on the next page you will find they talk about transportation which is done by pipeline and other areas where processing would be covered. Our suggestion is that in the general clause it should show that transportation...

The Chairman: Before going on to that, you have first of all the general language in section 12 about the Governor in Council making regulations with respect to the exploration and drilling for the production and conservation of oil and gas. That is a pretty general heading. I would think nobody produces this product just to feel happy about having it. It will be inherent in all these other phases. Then looking at the rest of the language it says, "...in particular, but without restricting the generality of the foregoing, may make regulations..." and then you have all these paragraphs which although they have not specifically used the words "transportation and processing" certainly embrace those items. The question is whether we need the specific language. If we do, I am sure the committee would not have any objections to adopting it.

Senator Prowse: Mr. Lewis, section 12 at the moment says "The Governor in Council may make regulations respecting the exploration and drilling for and the production and conservation of oil and gas and, in particular, but without..." etc. Now what you would like in there would be something to the effect that he may make regulations with respect to production and conservation, processing and transportation. Would that meet your requirement?

Mr. Lewis: Well we thought after the word "conservation" there should also be "processing and transportation".

The Chairman: We understand the point you are making, Mr. Lewis.

Senator Prowse: That clarifies the other sections.

The Chairman: Later we will find out what the departmental view is on that. We are not proposing the amendment at this stage. There is another item which I think you should comment on. I am referring to paragraph 2 (a) where you say "There are circumstances where one person may hold several leases with varying rates of royalty within a spacing

unit". And the amendment you are suggesting would permit the owner to pool his several leases for the purpose of drilling or producing operations. I am reading now from page 2 of the brief that has been filed on February 28.

Mr. Lewis: This concerns section 21(1). It is a peculiarity of the Northwest Territories that when you look at the bill—the Canada Oil and Gas Land Regulations—which grants you the tenure to the land you hold, you are given time to change from a permit to a lease and you have the right to take the corridor—that part that goes back to the Crown but may be leased from the Crown upon agreement to pay a sliding scale royalty on production. The part you own, as a right through the permit, has a 10 per cent royalty throughout its life and the other part has a varying royalty and the position you could find yourself in is that you could have a pool and part of the land would be held at 10 per cent royalty and the other part is on a sliding scale in accordance with the production, and the point is we may want to develop this land from either the area that has the increased royalty or the part that has the smaller royalty with a smaller number of wells, and to make certain you know the part that belongs to the Crown and the part that belongs to you, you have to show or have some sort of working interest that would be in proportion, probably to the land itself, or to the actual portion of it which is produceable. Therefore we say that one company might want to unitize with the Crown—and normally this is done with two or more companies that cover a pool and they unitize or go on together to operate as one. Usually in the territories that is the position if one company wanted to unitize for the purpose I have mentioned. I do not know if I have made that too clear.

The Chairman: Well, we will hear the view from the other side later.

There is another thing I would like you to comment on specifically. It is on page 3 of your brief, referring to section 13 (2) (b), you suggest a re-draft. What is the purpose of that?

Mr. Lewis: I think Mr. Walton can explain that better than I can.

The Chairman: Mr. Walton.

Mr. Walton: We have used virtually the same wording, as in the bill but it is changed a little to make it a little clearer, in our

opinion. The way it appeared originally, we felt it could be redrafted and made just a little clearer. It is just a matter of drafting.

The Chairman: On section 27, Mr. Lewis?

Mr. Lewis: We felt that section 27 needed revision. I think we understand the intent of the section itself, but we would point out that section 27...

The Chairman: This is on page 20.

Mr. Lewis: ...allows the minister to request unitization of a pool, if he feels that unitization will prevent waste.

When you look at sections 17 and 18 you will find that the conservation engineer is given practically the same type of power, in effect. He has the right to issue a hearing order and close operations if he feels there is waste. If he did that, we feel the companies would probably unitize on their own. There is a method of voluntary unitization, and the effect of the section is adequately handled by those two particular sections.

The Chairman: I take it your real, basic objection is that section 27 gives the minister the power, and without any hearings...

Mr. Lewis: That is the second part of it.

The Chairman: ...and without any appeal.

Mr. Lewis: Yes. I was going on to the second part. We feel that throughout the act there is a committee set up which you can appeal to from the conservation engineer, and he is allowed to have a hearing. In this particular area we feel, if the section stays in, the industry would like to have a hearing, and the reason is this. When you get to unitization of a pool, companies, with their engineering staff, might come to different conclusions as to the method of unitization or of efficient production of the pool in order to prevent waste. You might find that someone would think the best way to do it is to inject gas into the pool and have a gas injection. On the other hand, they might feel the natural reservoir is sufficient. There is a water drive and the water will come up and flush it through; or you may have to pump water down to help the natural water drive, if there is one; or they may decide the best method of arriving at conservation would be some type of miscible fluid, with the use of condensates or light ends going down into the reservoir and flushing through in the same way as dry

cleaning fluid. You might get the maximum amount of oil that way, as long as your economics are sound.

If there are two or more companies in a pool, we feel it is only fair that they be heard before a board or some regulatory group that can understand the technical ramifications and come to some conclusion and, at that time, possibly give a direction. But just to come out and give the direction as written in section 27, we feel, is not in the best interests of the industry or in the best interests of conservation. So, we are suggesting that if the section is maintained we should have the right of a hearing and appeals, of course, that go in the act with the other sections.

Senator Connolly (Ottawa West): Who do you suggest should appoint that board of review—the minister, in the event of a request?

Mr. Lewis: The act does call for a conservation committee, and possibly it could be used.

The Chairman: Have you any comment on Part III, Mr. Lewis, dealing with appeals and administration?

The first provision in section 38 is:

(1) Except as provided in this Act, every decision or order of the Committee is final and conclusive.

That is the Conservation Committee you are talking about, is it?

Mr. Lewis: Yes. I must say the Legal Committee had some difficulty in understanding the appeal section. It follows, to a certain degree, the one in the National Energy Act, and it appears to us that the Exchequer Court of Canada, in section 38, is given all the power of appeal; it is the only place to which you can appeal. Then, under the next section it is taken away, so you end up with a very limited position on appeal, mostly with regard to law and jurisdiction.

I think that is the only thing, with the exception of section 41, which gives the right of the committee to go to the Supreme Court of Canada. There were some problems raised, when you look at section 41 and 40, because you get into a position that the Governor in Council could possibly over-rule a Supreme Court decision, in that if the committee asked the Supreme Court of Canada to decide on a question of law, and it was decided against them, then they would be compelled under

the act to make an order; but, of course, the Governor in Council has the power, under section 40, to reverse an order of the committee.

Senator Connolly (Ottawa West): But not of the court.

Mr. Lewis: They cannot reverse the court itself, but if the court reaches a decision, then, as I read this, the committee is bound by the court and would have probably to reverse its own order, and then the Governor in Council could reverse or quash the order. It is, in effect, a method some lawyers were concerned about.

Senator Connolly (Ottawa West): It is certainly going in the back door, trying to do it that way.

Senator Prowse: In other words, you could go through the committee, and then there could be an appeal from the committee to the Exchequer Court and you could get a decision from there, and then have the minister throw the whole thing out?

Mr. Lewis: No. The way I read it, the committee, under Section 41, can go to the Supreme Court of Canada on a question of law or jurisdiction, or leave may be granted a company to do it. Then the Supreme Court of Canada could find, for instance, the order was bad and outside the jurisdiction. Then under the act the committee would have to reverse the order, and then the Governor in Council could quash the order made by the committee.

Senator Prowse: My point is that in reading it it seems to me that what the act purports to do is to set up an appeal procedure—and it would be an expensive one, by the way—whereby you could go through all these appeal procedures and when all that is finished the minister could say, “We do not want this,” and, bingo, that is the end of it, you have had it, and there is nowhere to go from there.

Mr. Lewis: It is not the minister, but the Governor in Council.

Senator Prowse: That is the same thing.

Mr. Lewis: Well, . . .

Senator Prowse: The final arbiter is going to be the Governor in Council.

Mr. Lewis: Yes, under the act.

Senator Prowse: Regardless of any decisions made previously, because the residue of power lies there.

Mr. Lewis: I think so, under section 40.

Senator Prowse: I was confused when I read that section 38(2) gives exclusive jurisdiction to the Exchequer Court, and then subsection (3), unless I read it awfully carelessly, seems to take it away. Section 38(3) immediately proceeds to take away all the rights given you by section 38(2).

Mr. Lewis: That is the conclusion I have come to, and I think there is a similar provision in the National Energy Board Act.

Senator Prowse: The only protection is that the courts consistently refuse to take any notice of those limitations.

Mr. Lewis: That may be, but under section 41 you have the right of appeal to the Supreme Court.

Senator Prowse: Yes, and then they say you can appeal on a question of law or a question of jurisdiction, or a question of fact and law and jurisdiction, but how do you get before the court?

Mr. Lewis: I must say that we were confused with this. First of all, it seems to give the power to the Exchequer Court, and then it takes it away, and I really do not know what is left.

Senator Prowse: You have not discovered just where you can get your foot in?

Mr. Lewis: No.

Senator Connolly (Ottawa West): With reference to Senator Prowse's objection and your own, Mr. Lewis, about the wiping out of the effect of section 38, if you go to the court for leave do you not have to argue the question of law and fact, and, in effect, are you not then getting your case before the court. If they find that it is not justified then you have really had your day in court, have you not? You will be arguing the merits when you go through that procedure, will you not?

The Chairman: But, senator, if you look at this for a moment you will see that subsection (3) of section 38 in effect says that you cannot challenge a decision or order of the committee by any proceedings known as *certiorari*, prohibition, mandamus, or injunction.

Senator Prowse: Or any other proceeding.

The Chairman: Yes. You cannot challenge it by that means. But, they say in section 41 that you can appeal the decision on certain grounds to the Supreme Court of Canada.

Senator Prowse: That would be a decision that they did not have the jurisdiction, which would be...

The Chairman: No, it is upon a question of law or a question of jurisdiction. In other words, the facts as found by the committee in the first instance cannot be challenged, and the only appeal you have is an appeal on law or jurisdiction from the committee's decision to the Supreme Court of Canada, because the Exchequer Court only comes in if the committee wants an opinion, which is obtained by way of something like a stated case. Ordinarily, this will be an opinion in relation to some point that the committee is considering. The committee can go to the Exchequer Court and ask for that opinion. The Exchequer Court gives the advice, which is remitted back to the committee, and then I would judge that the committee can pay attention to it or not pay attention to it, as it likes. But, you have no appeal in relation to what the Exchequer Court thinks. Your appeal is from the decision of the committee directly to the Supreme Court of Canada.

Mr. Lewis: I think that that is correct, sir.

The Chairman: Yes. I think you can labour your way through it, and it is all right.

Mr. Lewis: I might say that after we studied it we had no real objection, and we are not raising this as an objection, but I thought it should be brought to your attention.

The Chairman: The only qualification might be that you do not want a head-on clash in respect of a decision of the Supreme Court of Canada, which the committee must then with all speed put into its decision, and then at that stage find yourself faced with a decision of the Governor in Council who may at any time, in his discretion, either upon petition of any interested party, or of his own motion, vary or rescind any decision or order of the committee.

If you were going to apply that power after the Supreme Court of Canada had given its decision, why, you are playing ducks and drakes with the whole appeal procedure. There should be...

Senator Prowse: This, then, gives them a residual absolute jurisdiction.

The Chairman: Yes, there is a residual absolute jurisdiction there.

Senator Connolly (Ottawa West): There was a section in the Railway Act, I think, in respect of where you had a hearing before the Board of Transport Commissioners, as it then was, that provided that that decision would not stand—this was an administrative court, if you will, but a good court—unless it was confirmed by order in council. Once or twice these things were disallowed without the evidence being given. I think this is a similar situation. I think the chairman has pointed it out very clearly.

The Chairman: I think we have got to take a good look at this. The question you have to decide is whether the decision of the Supreme Court of Canada is final and conclusive. If you say that, then, of course, the Governor in Council stops somewhere along the line. You always have a right to take an appeal to the Supreme Court on a question of law, or a question of jurisdiction, from any order of the committee. If the committee makes an order, and the Governor in Council says something different, then the committee must adopt what the Governor in Council says. That is an order of the committee, and your right of appeal to the Supreme Court of Canada must be from that last decision of the committee.

Perhaps you can work your way through this, but I would like to see the statute made a little clearer on the relative positions, and the timing of when the Governor in Council may act under section 40, and when you may appeal under section 41. I think we have got to look at that.

Senator Prowse: Do I understand your interpretation, Mr. Chairman, to be that section 38, referring to the Exchequer Court, is intended to make the Exchequer Court a party of legal reference, and that is all?

The Chairman: For an opinion. They want the advice of the Exchequer Court.

Senator Prowse: Before they decide a point of law?

The Chairman: Yes, on a question of law or a question of jurisdiction they can go to the Exchequer Court and get advice, and they can take it or not, as they like.

Senator Prowse: Once the committee has decided what they want to do with that, then

the appeal will lie to the Supreme Court of Canada?

The Chairman: Your appeal only comes when the committee makes a decision. They use the description here of a stated case. Magistrates, on a question of jurisdiction and a question of law, are very often asked to state a case for the opinion of a higher court. The decision is then referred back to the magistrate, and he decides in accordance with that decision. But, there is nothing here which says that the committee must accept the opinion of the Exchequer Court.

Senator Prowse: And it is at that point that your right of appeal to the Supreme Court arises, so that the real right of appeal is to the Supreme Court.

Senator Haig: Except that the cabinet can reverse it.

Senator Prowse: That would be on a matter of policy, I would think.

Senator Haig: What is the point of the appeal procedure if in the end result the cabinet is going to make the decision?

The Chairman: This is a question we have to take a good look at.

Senator Connolly (Ottawa West): May I ask a question more from the practical point of view, and which may be of more importance to the industry? In the event that these appeals are taken—obviously, they are time consuming—are there situations in the development of an oil or gas field in which speed is of the essence in respect to making a decision of this kind? Would the time factor be a deterrent to using the appeal procedure?

Mr. Lewis: I think it could be, sir, when you are dealing with production. You could be put in the position of being shut in for some reason, and you would be appealing one of these orders and...

The Chairman: Well, the appeal to the Supreme Court must be made within one month after the making of the decision or order.

Senator Connolly (Ottawa West): But then you have got to get on the list.

The Chairman: It must be set down for hearing in the Supreme Court within 60 days of the making of the order.

Senator Prowse: There is provision there for a stay, and there is provision for conditional rights to continue.

The Chairman: The only thing that is not stated in here is what limited period of time by statute we will permit the Supreme Court of Canada to have for giving their judgment.

Senator Prowse: It would be tricky.

The Chairman: It would.

Mr. Lewis: Just to answer Senator Connolly's question, I could visualize a problem in the field of pipelines where two or three people applied and one was granted and then the people who were turned down may have the right of appeal and the people who had the order might start construction. You could run into a situation like that.

Senator Prowse: But not under this act. It seems to me that even with the transmission in there you would be under this act for what amounts to local things within the territories themselves. The moment you start to cross a border at all, you then come under the National Energy Board Act and their control of the pipelines.

Mr. Lewis: When you look at the map of Canada you see some pretty big pipelines and territories. I am just suggesting it as a possibility.

Senator Prowse: You can go a long way before you begin to hit a border.

The Chairman: We will make a note of that. Is there anything else you wish to add, Mr. Lewis?

Mr. Lewis: Yes. There is one point on the geographical extent of the bill. We considered this and thought that again we should mention it. I have prepared a map of Canada which I would like to leave with you. We have put in a heavy black line showing you the division of power between the Department of Energy, Mines and Resources and the Department of Indian Affairs and Northern Development. This act, as we read it, refers to the upper portion which comes within the ambit of Indian Affairs and Northern Development.

Senator Connolly (Ottawa West): The northern portion, that is.

Mr. Lewis: Yes, the part above the black line on my map, which is mostly north of 60, and then across the north part of Hudson's

Bay, with the exception that there are two islands at least in Hudson's Bay and one or two in the Hudson strait that seem to come within the ambit of this act, whereas if you read the division of powers of the departments you find that they come within the area where the administration is handled by the Department of Energy, Mines and Resources.

This gives us some concern. We do not know how serious it is. We point that out because there is an area of conflict in here. Again the industry would like to deal with one body. Of course, this is a question of Government policy, but when you are dealing with conservation and that sort of matter, the industry takes the view that it would be preferable to have one act covering the whole federal area, whether it be off-shore or on-shore. We know there are some arguments against that, but it seems to us that it is easier from our point of view to be dealing with one group rather than have to worry about crossing these lines. And there are areas where you might have off-shore or pools crossing the line, and if you do not have the same conservation rules and regulations it could give some concern down the road.

Of course, the development is in the very early stages there and we just do not know how serious this is, but we point out that it could be of some concern.

As you recognize, most of the off-shore areas of Canada are not covered by this conservation act.

Senator Prowse: Nor is there any authority in this act to rationalize production as between various provincial areas in the Northwest Territories.

Mr. Lewis: That is true.

Senator Prowse: We have no jurisdiction in that area now with the exception, possibly, of the Energy Board.

Mr. Lewis: Not yet. That is correct. There is no proration or market-sharing.

Senator Prowse: Or anybody to deal with it.

Senator Connolly (Ottawa West): Is there any land up in the territories that is owned by or is under the control of the National Parks Division?

Mr. Lewis: Perhaps Mr. Walton could answer that question.

Senator Connolly (Ottawa West): My point is that you are not allowed to drill in parks or to produce in parks.

Senator Prowse: There are no parks in the Northwest Territories.

Mr. Walton: I think your question was whether there were any areas in the territories that are under the jurisdiction of the federal Government in the national parks.

Senator Prowse: There are no park areas up there yet.

Senator Connolly (Ottawa West): I think there are.

Mr. Walton: I think there are. Are there not? I would have to look at that more carefully. I thought that Wood Buffalo Park went into the Northwest Territories.

Senator Prowse: No. It is in northern Alberta. It has been a matter of concern to us out there for a long time. It ends at the border.

Senator Connolly (Ottawa West): At any rate, there is a definite prohibition against drilling in parks.

Mr. Lewis: I do not know of any park up there, sir.

The Chairman: Is there anything else?

Mr. Lewis: No, the only other point that was touched on very lightly by Senator Prowse was that of the pipeline problem. You will notice in section 12(j), at the bottom of page 7 of the bill that one of the regulatory powers that the Governor in Council is given is the power to authorize the minister, or such other person as the Governor in Council deems suitable, to exercise such powers and perform such duties as may be necessary for the removal of gas and oil from the territories.

The concern we have there is whether there is a possibility of a conflict with the National Energy Board Act with the removal of gas. The energy act talks about extensions from a province or across a province, and we were not too certain what was meant by section 12(j). It may be tankers or something else. At any rate we raised the point that in our view there may be a conflict there.

Senator Prowse: Unless they mean the National Energy Board is the instrument to look after that.

Mr. Lewis: This is just the powers they have for regulations. They may not be taken.

Senator Prowse: There is an area for conflict at present.

Mr. Lewis: We submit that there is, sir. I think that is all I have to say, Mr. Chairman. Again I want to reiterate our appreciation for having been able to be heard.

The Chairman: It is just part of our policy here that any person wanting to make a submission concerning legislation will be heard.

Now, we have here, representing the department, Dr. H. W. Woodward, Chief, Oil and Mineral Division, Northern Economic Development Branch, Department of Indian Affairs and Northern Development. With him is Mr. R. R. McLeod, Administrator, Oil and Gas Section of the same division of that branch of the Department of Indian Affairs and Northern Development.

Dr. Woodward, what is your position today?

Dr. H. W. Woodward, Chief, Oil and Mineral Division, Northern Economic Development Branch, Department of Indian Affairs and Northern Development: Mr. McLeod and I are here only as observers for today, sir.

The Chairman: As I mentioned earlier, the Deputy Minister asked us not to conclude our hearings until he would have the opportunity of considering the submissions which were to be made today and which we have just heard. He therefore will appear at our next meeting, as I understand. I think we should meet his wishes in that regard in order to get his views in relation to what has been said in this submission. Now, the committee adjourns until next Wednesday.

The committee adjourned.



First Session—Twenty-eighth Parliament
1968-69

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE
ON
BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 24

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WEDNESDAY, MARCH 12th, 1969

Sixth Proceedings on Bill S-17,

intituled:

"An Act respecting Investments Companies".

ORGANIZATION REPRESENTED:

Investment Dealers' Association of Canada.

APPENDIX:

"K"—Brief submitted by the Investment Dealers' Association
of Canada.

The Queen's Printer, Ottawa, 1969

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Lang
Aseltine	Desruisseaux	Leonard
Beaubien	Gelinas	Macnaughton
Benidickson	Giguère	Molson
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Inman	Welch
Connolly (<i>Ottawa West</i>)	Isnor	White
Cook	Kinley	Willis—(30)

Ex officio members: Flynn and Martin

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, January 22nd, 1969:

“Pursuant to Order, the Senate resumed the debate on the motion of the Honourable Senator Desruisseaux, seconded by the Honourable Senator Sparrow, for second reading of the Bill S-17, intituled: “An Act respecting Investment Companies”.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Desruisseaux moved, seconded by the Honourable Senator Sparrow, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative”.

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

Wednesday, March 12th, 1969.
(26)

At 11.30 a.m. this day the Standing Senate Committee on Banking, Trade and Commerce met to *resume* consideration of Bill S-17, "An Act respecting Investment Companies".

Present: The Honourable Senators Hayden (*Chairman*), Beaubien, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Inman, Isnor, Kinley, Lang, Macnaughton and Thorvaldson.—(14)

Present, but not of the Committee: The Honourable Senators Grosart, Hays, McLean, Phillips (*Rigaud*) and Prowse.—(5)

The following witness was heard:

INVESTMENT DEALERS' ASSOCIATION OF CANADA:

Stanley E. Nixon, President.

(Executive Vice-President, Dominion Securities Corporation Limited, Montreal, Quebec)

It was agreed that the brief submitted by the above organization be printed as Appendix "K" to these proceedings.

At 12.25 p.m. the Committee adjourned consideration of the said Bill until Wednesday, March 19th, 1969; and *resumed* consideration of Bill C-154, "Plant Quarantine Act".

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

THE SENATE
COMMITTEE ON BANKING, TRADE AND COMMERCE
EVIDENCE

Wednesday, March 12, 1969.

The Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-17, respecting Investment Companies, met this day at 11.30 a.m. to give further consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The *Chairman*: Honourable senators, on the last occasion we adjourned consideration of Bill S-17 it was for the purpose of recalling Mr. Humphrys to review and express his opinions on the various submissions.

Two things have happened since that time. One is that the Investment Dealers' Association of Canada decided they wished to make a submission. They are here today. I think our first order of business is to hear them. In regard to the second item, Mr. Humphrys, of course, had a large order of business. He must review everything that had been said here, and he does not feel that he, as yet, has had sufficient time. I am inclined to agree with him. Of course, we are under pressure to finish this today. My suggestion is that we hear the investment dealers and then adjourn consideration to a further meeting of the committee.

The Investment Dealers' Association of Canada are represented by Mr. Stanley E. Nixon, Executive Vice-President, Dominion Securities Corporation Limited, Montreal, and President, Investment Dealers' Association of Canada.

Also present are:

Mr. Howard R. Bennett, who is with us today. Mr. Bennett, is a Partner, Richardson Securities of Canada, Toronto, Chairman of the Ontario District and Vice-President, Investment Dealers' Association of Canada.

Mr. J. A. S. Penny, Vice-President, Royal Securities Corporation Limited, Montreal, Vice-Chairman, Quebec District Committee, Investment Dealers' Association of Canada.

Mr. R. A. F. Sutherland, Q. C., Counsel, Investment Dealers' Association of Canada.

Mr. H. L. Gassard, Managing Director, Investment Dealers' Association of Canada, Toronto.

We have quite an array for a panel, and Mr. Nixon will make an opening statement.

Mr. Stanley E. Nixon, Executive Vice-President, Dominion Securities Corporation Limited, Montreal and President, Investment Dealers' Association of Canada: Mr. Chairman and honourable senators, I wish to express the appreciation of the Investment Dealers' Association of Canada for the opportunity you have given us to appear before you today.

A general statement of the views of our association on Bill S-17, an act respecting investment companies, is set out in a letter dated February 27, 1969, sent by us to Senator Hayden, Chairman of the Senate Committee on Banking, Trade and Commerce. Copies of this letter were made available for distribution to committee members.

It is not my intention to read this letter, but I will be glad to answer questions which you may wish to direct to any of its contents. Should I not be able to answer your questions, I am accompanied today by Mr. H. L. Gassard, Managing-Director of the IDA and Mr. R. A. F. Sutherland of the Borden, Elliot law firm who act as counsel to our association, and I am confident that among us we should be able to give you the information you desire.

Before inviting your questions, I would like to provide you with some supplementary information on the background and operations of the Investment Dealers' Association of Canada. This information may assist you in your consideration of our strongly held view that members of our association should be specifically excluded, by the legislation itself and not by ministerial exemption, from the operation of the legislation contemplated by Bill S-17.

Our association, founded in 1916, has a history of continuous operations covering more than 50 years. We are an unincorporated, non-profit body. The right to apply for membership in the association is open to all individuals, firms or corporations carrying on business in Canada as investment dealers, provided the applicant satisfies the requirements set out

in our by-laws, and further provided that the application is approved by the IDA executive committee in the district in which the applicant's head office is located, and by the IDA national executive committee. These entrance requirements involve matters such as the nature of the business conducted by the applicant, the experience of the persons who comprise the organization of the applicant, and the applicant's ability to comply with the minimum capital and other financial standards established by the IDA.

The IDA is a national organization. Our membership, our activities and our influence extend from coast to coast. In keeping with the size and diversity of Canada, we have six district organizations. Each of these districts has an executive organization. The senior executive group in the association is the national executive committee which includes representation from the six districts, the president and the immediate past president, the first vice-president and the immediate past chairmen of the Ontario and Quebec districts.

The objectives of the association are directed to the development and maintenance of an environment in Canada favourable to saving and investment, both of which are essential to our continued economic growth, to a rising standard of living, and to the productive employment of our growing population.

For purpose of illustration, here are three paragraphs from the declared objectives of our association as set out in our constitution:

(1) To encourage through self-discipline and self-regulation, a high standard of business conduct among members, and to adopt and enforce compliance with such practices and requirements as may be necessary and desirable to guard against conduct contrary to the interests of members, their clients or the public;

(2) To establish and enforce compliance with capital, insurance and other requirements for the protection of members, their clients and the public;

(3) To co-operate with and support governments in developing financial legislation for the furtherance of the public interests and to oppose such legislation if it is deemed contrary to the public interest.

For the record, I would point out that our constitution provides that the IDA is not formed for the purpose of affecting the price of securities, nor to interfere in any way with free and fair competition among our members in the business of dealing in securities.

At present, there are approximately 200 firms in Canada which hold memberships in the IDA alone

in one or more of the major Canadian stock exchanges, or in the IDA and one or more of these exchanges. These firms deal with the public, as agents or principals, in the purchase and sale of securities. Their operations include the underwriting and distribution of new securities issues, dealings in issues listed for trading on stock exchanges, and dealings in unlisted issues in the over-the-counter market, along with a variety of other services to investors and security issuers.

Out of this total of 200 firms, 115 are members of the IDA and one or more of the stock exchanges, and 41 are members of the IDA alone. In other words, the IDA is representative of, and its by-laws and regulations are applicable to, about 80 per cent of the 200 firms. Our 156 member firms consist of 146 Canadian based organizations and 10 United States based firms. A total of 113 of the Canadian firms operate under provincial letters patent, 27 under federal letters patent, and 16 as partnerships or sole proprietorships. Capital invested, including sub-ordinated loans, in these Canadian firms, is estimated to aggregate about \$150 million. Aggregate annual business volume of these firms in the form of new securities issues, dealings in listed and unlisted securities and money market operations, is measured in billions of dollars.

Regulation of the securities industry is not a new idea. Text books tell us that the history of securities regulation in one form or another can be traced back at least as far as a statute in 1285 authorizing the licensing of stock brokers in the City of London. In Canada, our industry—and in particular the members of the IDA—carry on their business within an elaborate framework of regulation. Some of this regulation is exercised by provincial authorities under the securities acts which exist in each province of Canada, and some is exercised under the watchful eye of the provincial authority by self-regulatory bodies such as the IDA and the major Canadian stock exchanges.

Our letter of February 27, 1969 addressed to Senator Hayden, was accompanied by copies of IDA regulations along with a copy of an 111 page statement of policy of the Ontario Securities Commission dealing with the conditions of registration which apply to brokers and dealers in Ontario. This has just come out and it shows you the massive type of regulatory material which dominates our industry. It covers subjects such as minimum capital requirements, bonding and insurance, business records and accounting procedures, and audit requirements and procedures. While the Ontario Securities Commission standards have legal force only in Ontario, I would point out and emphasize that the IDA regulatory standards and requirements in these areas of business policy and practice are almost the same in content and they apply all across Canada.

Members of the IDA are very conscious of their responsibilities to the investing public. This attitude is evidenced by the acceptance and support of IDA programs which involve compliance by all members with practices and requirements designed to maintain the highest standards—first, of ethics in the conduct of their business—second, of financial reliability in their dealings in securities—and, third, of professional competence in their relationships with investors.

Today, we have securities acts which are substantially uniform in content in the provinces of Ontario, Manitoba, Saskatchewan, Alberta and British Columbia. These acts came into force in recent years. Quebec and the Maritime Provinces are operating under older acts which confer wide regulatory powers on the respective authorities concerned with their administration. In our opinion, it is not too much to hope that in the reasonably near future, all provinces will have securities acts in substantially the same form.

Federal intervention and active participation in the field of securities regulation seems imminent. It is our hope that this participation will take a form which does not impose unnecessary burdens on the effective working of our capital market, or on the day to day business activities of our industry which is already labouring under a heavy load of governmental and self-regulation.

Our formal submission on Bill S-17 addressed to Senator Hayden under date of February 27, 1969 contains further information with respect to IDA programs of self-regulation, provincial regulation, stock exchange regulation, the financing of member firms, including sources of borrowing and clients' money, and the anticipated federal securities legislation.

In our opinion, Bill S-17 would involve over-control of our industry, if it were applied to it. The present mixed pattern of governmental and self-regulation covering disclosure in prospectuses relating to new issues, the licensing of brokers, dealers and sales representatives and related matters, is working effectively in the public interest. This pattern of control is to be expanded in the near future by the introduction of federal securities legislation. Accordingly, we respectfully submit that members of our association incorporated under federal law should not be subjected to the reporting procedures, operating uncertainties, limitations and arbitrary regulatory action proposed in Bill S-17.

In our formal submission to this committee, we offered some observations with respect to the impact on business in general of Bill S-17. As an important part of the financial sector of the Canadian business structure, members of the IDA have a broad association with, and knowledge of, a very wide spectrum of Canadian business life.

Uncertainty is destructive of action in the formulation of business policy in the initiation of corporate expansion programs, and in the making of investment decisions. Enactment of Bill S-17 would create uncertainties of vital importance to the broad group of business enterprises which would be embraced by the simplified definition of an "investment company" set out in the bill. It would also create special uncertainties for the holders of the shares and debt securities of these companies, and for those institutional and private investors who are potential providers of new capital for the financing of corporate expansion.

In our view, the provisions of Bill S-17 are much too wide in scope. Measures designed to exercise the fundamental power of life and death over any sector of the business community should "shoot like a rifle, not like a shotgun". The power to regulate should be created by law only when the target area has been precisely defined, and then only if it is clearly evident that the public interest requires this type of intrusion into corporate operations.

Under the proposed legislation, all companies fitting the description of an investment company, which remain as federal incorporations, will not know for two years whether they are to be subjected to the rigorous regulatory provisions of the legislation. Even after two years, they will still never be sure that an initial exemption from the regulatory provisions may not be reversed at some future date by the simple exercise of ministerial discretion.

Through these brief comments, and the more extended treatment of this subject contained in our letter of February 27, 1969, the IDA records its disagreement in principle with Bill S-17 in its present form. Quite apart from the views already expressed with respect to the position of the members of IDA under this proposed legislation, we respectfully submit that the process of gathering data to enable the selection of specific areas for governmental regulatory action as serious and pervasive as that proposed by this bill should be separated from the enactment of the laws creating the desired regulatory authority when the area of its application has been clearly defined.

The motivation of Bill S-17 is better protection for investors and others who provide funds to financial intermediaries. We are in agreement with this objective, but we do not agree with the method of dealing with the matter as proposed in Bill S-17.

We have not developed a detailed series of suggested amendments to the bill because we are convinced that the proper course of action is to substitute a new bill for the present draft.

The new bill should provide only for the gathering of data from which decisions could later be made on the specific types of financial intermediaries which should come under federal supervision, inspection and control. The sections of the proposed legislation providing for this supervision, inspection and control should not be introduced until these financial intermediaries have been clearly defined.

We also submit that the section of Bill S-17 dealing with assessments is unfair and unreasonable. The main benefits from any effective system of federal supervision and control of financial intermediaries will accrue to the general public rather than to the intermediaries. For this reason we believe the costs of this Government activity should be paid out of general Government revenues rather than assessments on the intermediaries.

Finally, in any legislation on this subject which may be introduced now or later, we believe strongly, for the reasons we have expressed, that its terms should exclude from its operations all members of the Investment Dealers' Association of Canada.

This ends my presentation. As indicated earlier, I or my associates who are with me today will be glad to try to answer any questions you may wish to direct to us on the contents of our formal letter of February 27, 1969, or on the views I have expressed this morning.

The Chairman: Mr. Nixon, may I start the questions? You suggest that the bill initially should only be for the purpose of gathering information. The basis for the bill is that there is an area existing where there is a gap in the protection afforded to the investment public, really in the supervision of the use to which they put funds which they have raised from the public; the way in which they invest it. Within that area it appears to me that certain determinations could be made, and you could have positive law effective at once in relation to those areas. You could also have another part in the bill which would provide for the gathering of information to determine to what extent or how much further this legislation is to go embracing various types of businesses. If we do not accept the principle that there is a need now in some way and to some extent, then we are wasting our time in considering the bill at all. It is just an academic exercise.

Mr. Nixon: I would say, if it can be clearly defined and clearly proven that there are these areas that require this type of supervision and control at the moment, then action should be taken of a specific character to move in on that area. We certainly concur with that view.

The Chairman: It has certainly been the substance of submissions that we have had so far that the

definition is much too broad. I think there have been so many opinions expressed—maybe some by me even—that there are areas of exception that should be made.

I think you have seen all that we have said so far. The only other question I want to ask you at this time has to do with your saying that the terms of this legislation should exclude from its operations all members of the Investment Dealers' Association of Canada. Why?

Mr. Nixon: For the very reasons that I had hoped that I had outlined.

The Chairman: I wondered if you had summarized them. There may be one reason that is good enough in itself.

Mr. Nixon: One reason is that we are already subjected to and operating under the heavy load of regulatory action—both self-regulation and regulation by the provincial authorities under the Securities Act.

The Chairman: The regulation that you are talking about has to do with securities.

Mr. Nixon: I am not speaking only of that but also of the day-to-day activities involving such matters as are set out in this voluminous publication of the Ontario Securities people dealing with minimum capital requirements, bonding and insurance, business records and accounting procedures and audit requirements and procedures. It is a most elaborate system of day-to-day control of our business.

The Chairman: It may be that in relation to the IDA we should do what we did in the securities sections in the Canada Corporations Act a few years ago where we provided for a filing of a prospectus, and so on, but also stipulated that if the company were required to file such material with the Securities Commission, it would initially satisfy that requirement by filing the same material in Ottawa.

Mr. Nixon: Something of that type would certainly be workable.

The Chairman: It would remove the suggestion that you are being overburdened with documentation.

Mr. Nixon: Exactly. Well, it is not documentation that we are concerned with. It is the compliance. There is a tremendous burden we have to carry now. If you read through the regulatory material which was passed along to you with our letter, you see that it regulates every phase of activity carried on in our business, sets down minimum standards and provides

for effective examination to ensure that there has been compliance with those standards. And I might say that the standards of development have become much more sophisticated in recent years than they were ten years ago. There is now an elaborate system of control over the industry which is exercised either directly by the Government or by Government sanction.

The Chairman: You are saying that there are various supervisory groups which should get together and work as a team.

Mr. Nixon: We would prefer it that way. We would prefer one authority in the entire country, if it were capable of being accomplished. I also believe in the north star, but I do not believe I can reach it.

Senator Thorvaldson: I take it that companies like Atlantic Acceptance and Prudential were not members of the IDA.

Mr. Nixon: They were completely different. Theirs is a completely different industry in every way and not related in any way except as people who are borrowing money in capital markets and using the services of the investment industry. That is Atlantic, not Prudential.

Senator Thorvaldson: Have there been any business failures among members of the IDA over the past several years that have resulted in heavy losses?

Mr. Nixon: I can make the statement, sir, which I believe to be true—and I have been in the business for 41 years although the business itself has gone on longer than that—that no public person dealing with a member of the Investment Dealers' Association has ever lost securities as a consequence of the insolvency of a member.

Senator Connolly (Ottawa West): That goes back through the depression years?

Mr. Nixon: It goes back through the depression.

Senator Connolly (Ottawa West): Mr. Nixon, what percentage of the work of the IDA is related to the marketing of securities of various corporate enterprises in Canada, approximately?

Mr. Nixon: The great bulk of the work that is done by and developed in the underwriting of new corporate issues is done by a hard core of about 15 to 20 firms. They would devote, let us say, 30 to 40 per cent of their time to developing new corporate issues and marketing them. The rest of the industry is devoted to distributing issues and trading them in the over-the-counter market.

Senator Connolly (Ottawa West): Then your work would, of course, give your members a very intimate understanding of the corporate structure and stability of the companies whose shares you buy and sell on behalf of clients. Harking back to the general philosophy behind this act, I suppose that in the course of your experience you do come across issues that are proposed by companies which give you concern, and perhaps your members decide to advise their clients not to deal in such securities.

Mr. Nixon: There are two phases to that. First of all you have proposals which . . .

Senator Connolly (Ottawa West): If you will excuse me for just a moment, Mr. Nixon. I wonder if you know what I am trying to get at. You are talking here on behalf of the association, and what you have told us is very valuable, and I think the self regulation which the association has imposed on its members and which they accept is a most important thing for the financial community. But that is one step removed from what it is attempted to get at in this bill. What we are trying to do is clear our own minds as to where the real problem lies.

Mr. Nixon: Well, I do not think the problem lies with the Investment Dealers' Association.

Senator Connolly (Ottawa West): No, I didn't think it did.

Mr. Nixon: When you speak of issues being unacceptable to investment dealers, the first phase of that is that as underwriters of securities we are approached from time to time by companies who wish to "go public"—to use the popular expression of the moment. On examination of their affairs, we turn them down because we feel their securities for one reason or another are not appropriate for public subscription.

Senator Connolly (Ottawa West): This does happen?

Mr. Nixon: This does happen very definitely, sir. The second thing is, once securities get outstanding, however they may be put out, and they are in the hands of the public, there are constant dealings in them. One of the functions of the industry is to advise people as to the varying qualities of the securities and the proper selection to suit the individual investment objective. We are not financial intermediaries in the sense employed throughout the discussions on this bill. We derive our capital from the people who are in day-to-day business and in the operation of business. Our borrowings are from chartered banks and near banks, who are experienced, knowledgeable people providing money to us on a short-term basis against the collateral security of acceptable securities.

We do not at all raise money from the public either in the form of common shares, issued, nor do we raise money by issuing debt securities. We are a professional group dealing with other professionals.

The Chairman: What you are in fact suggesting is that if the definition of "investment" in relation to borrowing was qualified by saying "borrowing from the public" that would exclude you.

Mr. Nixon: Pretty close to it. There are at times in the money market operations where a member of the public or an individual—you see, the word "public" is pretty wide—the people who supply money in the money market can include corporations. The biggest business corporations in the country make their money work as hard as possible. They lend it to us for one day, or a week or two weeks for the purchase of securities that we undertake to buy back from them.

Senator Connolly (Ottawa West): Or that they might in turn sell?

Mr. Nixon: Yes; they work so carefully that they are lenders one day and borrowers the next.

The Chairman: I was using the word "public" to distinguish the kind of underwriting where you offer it to the general public as against where you go into a specialized market like the weekend market for the corporations. If all that kind of thing were excluded from the scope of borrowing, you would not under those circumstances be subject to the act?

Mr. Nixon: I would say that is right. You might have trouble grasping the exact concept and taking in all the facets of our business.

The Chairman: But your presentation today is on the kind of borrowing that you do which is not, you say, generally speaking the kind of borrowing that should be subject to the act.

Mr. Nixon: That is correct. We are not a financial intermediary to be picked up by this bill, and we are already under the framework of regulations directed by government.

The Chairman: In other words you are borrowing from sophisticated lenders?

Senator Thorvaldson: You are not borrowing from the public. Would you say you are 90 to 100 per cent dealers in investments and not investors as such.

Mr. Nixon: Let me put it to you this way, senator; we are never investors voluntarily. Sometimes we hold securities a little longer than we anticipated.

Senator Thorvaldson: You are really dealers as your name implies.

Mr. Nixon: I should not leave any impression that the amount of borrowing engaged in by the industry is small. The figures at the end of February for borrowings by investment dealers in the form of day-to-day loans plus the amounts borrowed from banks and near-banks, the figures for which we have every weekend, aggregate to \$850 million. But this is to finance this large mass of short-term papers which develop in Canada in the money market. There we take on inventories of this, and then you want a 60-day piece of paper and you want the money for 10 days. You buy it for 10 days and we buy it back. It is our rolling inventory of securities.

Senator Connolly (Ottawa West): But you are also to a very large extent advisers and counsellors in investments, are you not?

Mr. Nixon: Yes, we are.

Senator Connolly (Ottawa West): Would you say that might even be the principal role, or would it be the underwriting?

Mr. Nixon: I would say it is an associated role. It is part and parcel of the business, but not the major role.

Senator Connolly (Ottawa West): Would the major role be the underwriting?

Mr. Nixon: It would be the dealing in securities. The Investment Dealers' Association embraces many people who are also members of stock exchanges; it embraces some firms that are principally stock brokers. So we cover the whole spectrum, right from people dealing purely as principals, purely as agents, and the mixed group in between. Our main function is dealing in securities as principals or agents; that it, dealing in underwriting, the over-the-counter market, and listed securities on the stock exchanges. It is quite a bundle.

Senator Connolly (Ottawa West): Just taking your last statement, what percentage of your operations is for your own account and what percentage is the accounts of clients?

Mr. Nixon: Essentially everything you do is for the account of clients. The position you may take as a principal at any time is generally undertaken with the idea that you are doing like Eaton's does, taking on an inventory to service the investment requirements of the public as they come along day by day. When you underwrite a new issue you are committed to take it up from the issuing company. Then you work like mad to distribute the issue as quickly as

possible, and you hope you will have distributed it to the public within a relatively short period of time.

Senator Connolly (Ottawa West): The result is that you interpret this bill—and I think quite properly—as primarily a bill to deal with . . .

The Chairman: Investment.

Mr. Nixon: With companies that raise money from the public and then reinvest that money in things for a relatively longer haul.

Senator Connolly (Ottawa West): I had a word a moment ago that has gone from me, but you have said it.

Senator Isnor: Mr. Nixon, it appeared to me from your brief that you stress the overcontrol this bill would have on your company, is that right?

Mr. Nixon: Yes, sir. Because of the tremendous regulation to which we are already subject, it would only be a duplication and another layer of such regulation.

Senator Isnor: That is what I am coming to. You referred to the Ontario Securities Act.

Mr. Nixon: I used it as an example of one that is highly sophisticated in content and symbolic of our whole regulation right across the country.

Senator Isnor: How long has the Ontario Securities Act been in effect?

Mr. Nixon: Their form of regulation began to develop in 1945, in the present sophisticated form, but it is in the last few years that it has really reached the peaks that today it is operated at.

Senator Isnor: And because of the information you have to give to the Ontario Securities Commission for operations, do you think this would be a duplication of that work?

Mr. Nixon: If we were subjected to the operative provisions of the bill and were required to comply with the regulatory procedures, yes.

Senator Isnor: And am I right in suggesting that your operations really do not go east of Ontario?

Mr. Nixon: They certainly do, sir; they are nationwide and they are international.

Senator Isnor: There are no acts such as the Ontario Securities Act east of Ontario?

Mr. Nixon: Senator, I did not make myself clear when I dealt with that in my earlier remarks. The point I was really making was that the Ontario act was the most sophisticated in Canada, and has been, as it were, the leader in setting the pattern, as it has now been adopted by all the provinces to the west.

In Quebec and the Maritimes we have acts in force which are very effective ones, but they are older. For example, the Quebec act is 1955, and we would strenuously hope—and last week we had visits with the authorities in the Province of Quebec with the idea of promoting as quickly as possible the acceptance of the general principles which are now in force across Quebec, from the Ottawa River to the Pacific Ocean.

Senator Isnor: There is no such act as the Ontario Securities Act in any province east of Ontario?

Mr. Nixon: That is correct—not in precise form; it is in less developed forms. The Quebec act actually provides very wide discretionary powers, but it does not spell them out at great length like the Ontario act, and the Quebec act does not have that many matters that are dealt with in the Ontario act such as take-over bids, proxies, and things of this kind.

The Chairman: I know you are concerned for the Maritimes, Senator Isnor . . .

Senator Isnor: Yes, I am.

The Chairman: I can tell you this, that while the securities laws in the Maritimes may not be as sophisticated as the Ontario act, almost invariably if part of an issue is going to be disposed of, and therefore has to be cleared in the Maritimes, one of the things they insist on getting from you is a letter of approval of the Ontario Securities Commission.

Senator Isnor: Why should they have to go to Ontario for that?

The Chairman: It is not a case of going to Ontario for it, but it is a case of them accepting the Ontario clearance rather than have some kind of law itself.

Mr. Nixon: It is a very expensive business to set up a commission to conduct this regulatory procedure, and for a number of years, the smaller provinces, have relied quite heavily on the provinces who have elaborate staffs and facilities to process these things, particularly new issues with complicated procedures. We prefer to have one authority and one clearance on matters relating to the business, but it has not happened and it is still in the realm of hope rather than fact.

Senator Isnor: Your main objection, then, is the over-duplication of work which would be entailed if this bill went into effect?

Mr. Nixon: It is not duplication of work. We are already living with this great burden of regulation, and to have to comply with another authority is very damaging to our business operations.

The Chairman: I think there were two points he was making. One was having regard to the way in which they carry on business: firstly, they do not borrow money from the public; and, secondly, in the ordinary way they are dealers and not investors. Therefore, they should not be covered by this bill, because the object of this bill is to close a gap and to protect the public, once they have subscribed for bonds, etcetera, as to the purposes to which that money is put afterwards. They are dealers and not investors, but he did say this in answer to a question of mine, that if they were compelled to be under this act, and the provisions only required them to file a duplicate of what they had already filed under the Ontario Securities Act, that would not in itself be too onerous. We have made that provision now in the Canada Corporations Act. That is what the witness has said. The Maritimes are not suffering at all from anything that has been said here so far.

Mr. Nixon: I may add to what I said before about the Ontario act, that the regulations under this act, this voluminous set of material, are actually derived, over 90 per cent, from the IDA regulations. These are made applicable now to the entire industry—members of the Toronto Stock Exchange, the Broker Dealers' Association. . .

Senator Connolly (Ottawa West): Do you find that most of the issues are processed through the Ontario Act?

Mr. Nixon: Yes. The largest capital market in Canada, of course, is Ontario, so they naturally go there first.

Senator Connolly (Ottawa West): Mr. Chairman, since Mr. Nixon is so knowledgeable in this general field, I wonder if I could go a little further afield with him. The Acceptance companies have been here and they have said, as far as the federally incorporated companies are concerned, that they rather welcome regulation—perhaps not in the way it is done specifically by this bill, but generally to give them a status and prestige, not only in the Canadian market but in foreign markets. Would you be inclined to agree with that?

Mr. Nixon: I would say against the background of the unfortunate events of recent years that the industry has suffered seriously in the eyes of investors, and Government regulation of the industry, I believe, would probably be one of the elements which would assure a rebirth of confidence over the passage of time, and assure a continued ability to raise money,

at home and abroad, which these companies need in the conduct of their operations.

Senator Connolly (Ottawa West): One of the other representations made to us from several sources is that industrial holding companies with a large number of operating subsidiaries should specifically be excluded. Would you like to make any comment on that?

Mr. Nixon: I agree with the contention that they should be specifically excluded because they have merely chosen that form of corporate structure. For many reasons, instead of operating the companies directly, they operate them through subsidiaries.

The Chairman: What you are saying is that the investment by a parent or holding company in a corporate tool in the carrying on of the physical operations of manufacturing, et cetera, should not be an investment for the purposes of this act?

Mr. Nixon: That is right. It does not make that company a financial intermediary. It is one way of conducting the ordinary manufacturing and commercial life of the country.

Senator Connolly (Ottawa West): May I ask you another question in respect of having an investment tool—to use the chairman's description—to do the financing for various subsidiaries and affiliates? Would you have any comment to make about upstream and downstream lending?

Mr. Nixon: Perhaps I should declare my interest as a director of Canadian Pacific Investments. We have in Canadian Pacific Investments an arm known as Canadian Pacific Securities, which raises money for loans in any direction. I see no reason why in corporate life these types of loans should not be made. In ordinary business practice they are made all the time, and they are absolutely essential to the efficient operation of corporate enterprises. If one arm of your business is short of money, and another arm is long on money, if you cannot pool the money for the time being then it costs you more money to go out and borrow money for the deficient arm.

Senator Connolly (Ottawa West): They suggest that if such insurance were required this could be provided in the form of a guarantee by the financial company that was doing. . .

Mr. Nixon: Of course, there are not many situations that are comparable to that of Canadian Pacific Securities, where a branch of a company is set up specifically to raise money to be used throughout the family of companies that are associated with it.

Senator Connolly (Ottawa West): There is one other, but I forget which it is. The only other question I have—and I apologize for keeping the committee and you here—refers to this matter of disclosure which is required of companies that should be controlled. Would you say, in your opinion, that that disclosure should be as secret to the department as are disclosures made under the taxing acts?

Mr. Nixon: Categorically.

Senator Hays: I was rather interested, Mr. Nixon, in your observation about the many securities commissions there are in Canada. Do you think it would be desirable for Canada to have just one securities commission? Would the public be better protected?

Mr. Nixon: I do not think the public would necessarily be better protected, but from the viewpoint of the operations of our industry, and the speed with which one can bring a new issue to the market, there would be a benefit. Sometimes we are held up for six or seven weeks in respect to the filing of a prospectus and, of course, on this depends the time at which you can make a public offering. Sometimes you can get a prospectus through one provincial commission, and then another one will hold it up because it has different views. You have to deal with each of these commissions, and the total time involved becomes rather difficult to cope with. Markets can change quite rapidly in that time.

Senator Hays: What about multiplicity of costs?

Mr. Nixon: The costs of compliance with the regulations of various securities commissions are not that heavy. It is the cost in terms of delay in the free working of the capital market that may be heavy. You could expedite things if you had to deal with only one body, which had a certain standard that applied from coast to coast.

The Chairman: Sometimes the speed with which you are able to hit the market is very important.

Mr. Nixon: It is vital sometimes.

Senator Beaubien: May I refer to the Maritimes for a moment? Any member of the IDA doing business in Halifax would be under just as severe supervision and regulation as one in Toronto, would he not?

Mr. Nixon: All members of the IDA, no matter where located, have to adhere to the same set of regulations and standards.

Senator Beaubien: I just want to make sure that Senator Isnor realizes that there is no difference.

Mr. Nixon: I come from New Brunswick, senator, and I do the same thing.

Senator Phillips (Rigaud): I should like to address myself to a very pertinent question that the chairman raised. If the definition of "borrowing from the public" excludes borrowings from banking and other recognized institutions, and day to day financial dealings, would the bill then exclude, in effect, members of your association?

Mr. Nixon: I would think, Senator Phillips, that the definition would have to be broader than that, because the participants in the money market embrace a broad range of your whole corporate community.

Senator Phillips (Rigaud): Would you like to suggest, for the guidance of the committee, a definition of "borrowing from the public"—a definition that would ensure that members of your association are not affected by this bill. I think that that is the crucial point so far as your submission is concerned. Would it not be possible for you and your associates to indicate the exclusions involved in the term "borrowing from the public" which would characterize the nature of your business?

Mr. Nixon: Ontario has adopted one technique that could be used. They define sales that are exempt from the application of the act. If one were making a distribution of a new issue, and one could do it partly under one section of the act which exempts insurance companies, trust companies, and the like, and then there is another section that says that sales amounting to \$97,000 and over are free. A dollar figure of that kind might solve the problem. The bill might provide that any borrowing in excess of a certain amount is not covered by the bill. That is the reverse way of getting at it, as opposed to trying to define precisely the people involved.

Senator Phillips (Rigaud): I would like to suggest that in the redrafting, if any, of this bill it would be helpful if your association would submit to the chairman, and through the chairman to the committee, a proposed amendment that would indicate the type of borrowing from the public which would be excluded from the provisions of this bill.

The Chairman: Either the type that should be excluded, or the type that should be included?

Senator Phillips (Rigaud): Yes, either way.

Senator Thorvaldson: The phrase "borrowing from the public," or the bank, is not used.

The Chairman: The definition so far simply says "borrowing on the security of".

Senator Thorvaldson: That is the only definition there is.

The Chairman: We must therefore suggest where we might be able to distinguish and eliminate certain areas by the definition.

Senator Phillips (Rigaud): There are hundreds of millions of dollars that members of the Investment Dealers' Association borrow in terms of an hour by borrowing money from the bank and then the cheque comes in on the sale of the securities. Surely that is not the type of borrowing to be contemplated by this bill. Ninety per cent of public borrowing is done on that basis.

Mr. Nixon: Nor the kind of borrowing we do day to day on the financial money market.

Senator Phillips (Rigaud): That is what I meant, the financial money market.

Senator Desruijsseaux: Mr. Nixon, as President of the IDA you represented that you had about 80 per cent of the investment dealers in Canada as members. Therefore, about 20 per cent appear to be non-self regulatory. Is that correct?

Mr. Nixon: No, that is not right. Those are people who are not members of the IDA, but they are members of one or more of the Montreal, Toronto or Vancouver Stock Exchanges.

Senator Desruijsseaux: Inasmuch as they sell some securities that go through the exchanges.

Mr. Nixon: As members of the exchanges they are subject to the same pattern of rigorous control, supervision and examination as we are.

Senator Desruijsseaux: Does that leave others outside?

Mr. Nixon: There is a certain group of dealers, yes. The broker-dealers in Toronto, in Ontario, of course, are now subjected to the Ontario Securities Act. There are certain dealers elsewhere throughout the country who are not members of stock exchanges nor members of the IDA but they are few in number and their operations are not large. They are under the direct supervision, you might say, of provincial securities commissions, or people who administer the securities acts in the province where they are licensed to carry on business.

Senator Desruijsseaux: When Atlantic Acceptance failed there were repercussions on the investment dealers of Canada. Correct me if I am wrong, but there was a stoppage of financing, which may have been coincidental with other reasons. In your view as

President of the Investment Dealers' Association of Canada, what could have been done by the Government of Canada over this question of Atlantic Acceptance?

Mr. Nixon: That is a large question. You said that there was a reaction on investment dealers. I would say there was a reaction against the whole acceptance business and an impairment of the ability of that industry to get money from the public to finance and expand their operations. Whether any form of regulations would have triggered an earlier discovery of the things that went on in Atlantic I am not in a position to know. There were obviously financial statements which made things appear to be right which were not right. However, I have never believed that you can legislate honesty, experience or integrity. I do not know whether the more rigorous application of supervision and control by a regulatory body would have produced any better results. It might have precipitated discovery.

Senator Desruijsseaux: In your association you do just that, regulate yourselves?

Mr. Nixon: We regulate ourselves within our own business.

Senator Desruijsseaux: There must be a reason for it.

Mr. Nixon: The reason is because we believe it is better in business to maintain high standards, because obviously that will rebound to your benefit; your whole business is founded on confidence.

Senator Desruijsseaux: Suppose the Government of Canada were faced with a situation similar to that of Atlantic Acceptance and it became necessary to legislate and do what we could to prevent a recurrence of it?

Mr. Nixon: Where it can be clearly defined that there is a need for regulation, where there is a vacuum, or inadequate regulation, it is perfectly legitimate to move into it. What we feel is wrong is throwing a net over a very large percentage of the Canadian economy in order to trap two or three fish at the end of the line.

Senator Desruijsseaux: Any suggestion from the Investment Dealers' Association on what could be done in this respect would be appreciated. As sponsor of the bill, I think we should have something that would be acceptable to federally incorporated companies of Canada.

Mr. Nixon: We agree completely that if an area can be identified in which, in the interests of the public, a clear case can be made for introducing regulation,

control and supervision where it does not now exist, or where it is at the moment inadequate and can be improved, we say that is fine. However, we do say that these areas must be clearly identified before these measures are imposed. We do not agree with the idea of subjecting everybody to a lifetime of uncertainty whether or not they will be in or out of this net of control. We say identify the areas first and then move.

The Chairman: This is what we will try to do, to distinguish and draw the lines where they should be drawn. Are there any other questions? You have nothing further to add, Mr. Nixon?

Mr. Nixon: No, thank you, sir.

The committee adjourned consideration of the said Bill and proceeded to the next order of business.

Appendix "K"

INVESTMENT DEALERS' ASSOCIATION
OF CANADA
ESTABLISHED 1916

112 KING STREET W.
TORONTO 1

February 27, 1969.

Hon. Salter A. Hayden,
Chairman,
Senate Committee on Banking,
Trade and Commerce,
Senate Building,
OTTAWA, Ontario.

Dear Senator Hayden:

Re: Bill S-17, An Act respecting
Investment Companies

The membership of the Investment Dealers' Association of Canada ("IDA") includes most of the investment dealers in Canada operating as such and comprises 139 limited companies, nine partnerships and two sole proprietorships. Our Association is naturally very interested in Bill S-17 not only as it would affect our Members in connection with their own businesses but as it would affect our corporate clients and the investment community generally.

Our counsel have advised that the extremely broad definition of "investment company" as set forth in Section 2 of the Bill would make the proposed Act apply to most of our Members that are incorporated under the laws of Canada. Our Members do borrow money and use their assets for the purchase of securities, typically to the extent of more than 25% of their total assets.

Many of our Members function not only as brokers, broker dealers, and underwriters but also as financial intermediaries in a more generalized sense.

These clearly are functions requiring in the public interest high standards of integrity and competence and necessitating public regulation and industry self-regulation covering, among other things, licencing, minimum capital requirements, bonding, detailed financial reporting, audit controls, "snap" audits and examinations, and detailed rules governing dealings with securities and funds of clients. It is natural that ours is already a highly regulated industry and that provincial and stock exchange regulation, as well as our self-regulation, is steadily becoming more vigorous and refined.

We respectfully submit, however, that Members of our Association should be specifically excluded, by the legislation itself and not by discretionary ministerial exemption, from the operation of the legislation contemplated by Bill S-17 for the following reasons:

1. SELF-REGULATION

Our Members are subject to the far reaching self-regulation imposed, principally on a nation-wide basis, by our By-laws and Regulations (copies of which are delivered herewith). Under such By-laws and Regulations Members are:

- (i) required to maintain their capital at least up to specific minimum levels;

- (ii) required to select their auditors from panels of auditors approved annually by the IDA District Executive Committees;
- (iii) subject to "snap" audits by the Association Auditor or his nominees;
- (iv) subject to examination of their financial condition, books, client accounts, securities on hand, fidelity insurance coverage and affairs generally by the IDA's full-time Chief Examiner and/or members of his staff or persons appointed by him;
- (v) required to submit financial statements in accordance with standard reporting forms (copies of which are delivered herewith) developed jointly by the IDA and certain stock exchanges; and
- (vi) generally, required at all times to be able to show compliance with our By-laws and Regulations and to answer to appropriate committees, or the National Executive, of the IDA with respect to complaints received by the IDA from members of the investing public in connection with alleged misconduct of a Member.

The most recent initiative to prevent loss to clients of our Members has been the joint decision by the IDA and certain stock exchanges to create a \$1-1/2 million discretionary contingency fund, for which the funds have been raised. Our counsel are presently cooperating in the drafting of the legal instruments which will govern the administration of this fund.

2. PROVINCIAL REGULATION

Our industry operates within the context of Provincial securities legislation which requires that persons be registered to deal in securities and which regulates those so registered. Although there is considerable variation in the provincial statutes and in the size and experience of provincial securities commissions, recent years have seen much new securities legislation, increasing cooperation among provincial securities administrations, larger staffs, and increasingly vigorous and refined regulation requiring as a condition of continuation of registrations increasingly higher standards of conduct and financial reliability. We submit that regulation under securities acts, including the anticipated federal securities legislation (which incidentally, directly and through cooperation with provincial securities commissions, can make available to federal authorities the information and data as to our industry and thus satisfy one of the purposes of Bill S-17) is more appropriate to the business of our Members and our industry than the type of regulation envisaged by Bill S-17 even as the same may be amended in the light of your Committee's deliberations.

The fact of close provincial regulation is a salient reality of the business of our Members, and the "Securities Act" approach of controlling those who may make a business of dealing in securities and of requiring full disclosure with respect to securities offered to the public is the mode of regulation most appropriate to our industry.

In this connection there is delivered herewith, as an illustration of a recent provincial initiative, a copy of the Ontario Securities Commission's February 17, 1969 Statement of Policy on Conditions of Registration.

3. STOCK EXCHANGE REGULATION

Most of our Members are also subject to regulation by Canadian stock exchanges, and, although such regulation is not directly related to the purposes of Bill S-17, it constitutes yet another area of scrutiny of our Members affairs.

4. NO PUBLIC FINANCING

The equity capital of our Members is provided by persons who are or have been active in their businesses or, to a lesser extent and usually for relatively short duration, by the estates of such persons. Members do not offer or issue their equity securities or issue debt securities to the public and this makes them very different from true investment companies and emphasises the inappropriateness of their regulation by the proposed legislation.

5. DEPOSITS NOT SOLICITED

Our Members do not solicit or accept deposits, as such, from members of the general public nor publicly offer their own short term or other obligations.

6. SOURCES OF BORROWINGS

The equity capital of many of our Members is supplemented by borrowings from their own shareholders or partners by way of

subordinated loans which are made under agreements approved by the IDA and providing that such capital may not be withdrawn until the Association Auditor is satisfied that such withdrawal will not impair the maintenance of required working capital levels.

In volume, borrowing from outside sources is much more important. The principal sources of borrowed capital of our Members are the chartered banks but significant amounts are also borrowed from "near banks" such as trust companies, and loan and trust corporations, and commercial and industrial corporations and governmental agencies having temporary surpluses of funds available for short term investment. Our Members borrow from the more financially sophisticated lenders, persons who are engaged professionally in the management of money and who do not require the sort of protection envisaged by Bill 3-17. To subject an already highly regulated industry to additional regulations and reporting requirements requires the justification of a manifest public interest.

7. CLIENTS' MONEYS

Moneys owing by our Members to their clients at any given time consist mostly of "float" (funds arising from transactions in process) and funds held temporarily at the client's request pending investment or other use. In some cases, or invariably with some clients, where the amounts are substantial, the Member will be required to pay interest on such balances. The clients in such cases are invariably knowledgeable in financial matters

and not the sort of persons requiring, particularly in the light of existing regulation of our Members, the protection of the proposed legislation. In any event such funds are usually held on "open account" and do not involve the issuance of promissory notes or "evidences of indebtedness" as envisaged by Section 2 of Bill S-17.

8. INEQUALITY OF APPLICATION

Bill S-17, if enacted, will apply only to companies incorporated under the laws of Canada. We regret that we do not at this time have significant data on how many of our members are federally incorporated and how many are provincially incorporated but we do know that we have some Members in each category. Some of our Members would therefore be affected and some not. The uncertainty of the effect of the proposed legislation, not only because of the contemplated discretionary exemptions but also because of the wide latitude for future regulations, and the widespread feeling among our Members that they should not be lumped in with true investment companies or finance companies, will make it very tempting for those now operating under federal charters to obtain provincial charters. The fact that our incorporated Members are closely held corporations, with most of their shares held by persons active in their businesses, would make it very easy for them to take the steps required to obtain provincial charters.

9. ANTICIPATED FEDERAL SECURITIES LEGISLATION

It has been repeatedly announced that there is soon to be federal legislation relating to the securities business and the establishment of a federal Securities Commission. Presumably such legislation will be constitutionally justified on the basis of the interprovincial and international nature of many securities transactions, that is, based on the nature of the business rather than on the place of incorporation. Such regulation could not be evaded on the basis referred to in the foregoing paragraph. Presumably also a federal Securities Commission would work in closest cooperation with the provincial securities commissions and there would be a real possibility that the creation of the federal commission would not, because of such cooperation, lead to a significant increase in the present filing requirements affecting our Members. It is submitted that federal regulation of our Members and our industry under the proposed Securities Act is much more appropriate than regulation under Bill S-17. If banks, trust companies, insurance companies and loan companies can be excluded on the ground that they are already regulated by existing federal legislation and if a federal Securities Act is soon to be forthcoming, surely federally incorporated Members and all federally incorporated securities dealers should be specifically excluded from the operation of Bill S-17, on the ground that the federal Securities Act will cover them and inevitably be far more appropriate to the nature of their businesses.

Departing from the consideration of the position of our

IDA Members, I should like to make the following general observations with respect to Bill S-17.

A. SPECIFIC EXCLUSIONS

In general the scheme comprising an extremely wide definition and provision for specific exemptions at the discretion of the Minister involves too broad an application of ministerial discretion and would introduce too much uncertainty into the commercial community. The difficulty of framing a precise definition is recognized and probably justifies the extremely broad definition in the draft Bill although it would not justify its enactment into law. We believe that the draft Bill in its present form will cause companies likely to be affected to make representations and that, as a result of such representations, it will obtain, before the Bill should be proceeded with, information as to broad categories of companies almost certain to qualify for ministerial exemption. In our view such categories should be specifically excluded by the legislation itself before the Bill becomes law.

The need for data does not of itself justify the Bill in its present form. The fact that the alleged mischief desired to be cured cannot be more clearly delineated is itself a fact calling in question the need for legislation of such breadth and scope. In the interests of certainty the legislation should be focused as much as possible at the outset.

B. UNCERTAINTIES

The general framework of the Bill, with its very wide

definition of "investment company" and provision for exemption of certain companies by the exercise of ministerial discretion and with the two year delay in the coming into force of the provisions of Part II, will have the effect of introducing an atmosphere of uncertainty, if not apprehension, for companies with the definition of investment company. The very broad power to make regulations and the suggestions, however tentatively and moderately expressed before your Committee by representatives of the Department, that in the future there may be regulations prescribing categories of investment companies and prescribed capital ratios for such categories, will exacerbate the feelings of uncertainty. A natural result would seem to be a trend toward provincial incorporations and possibly a tendency for existing federal companies to seek re-incorporation provincially. The sense of uncertainty is itself bad for business, inhibiting initiative and encouraging a "wait and see" attitude.

C. PERSPECTIVE

Undoubtedly Bill S-17 received at least some of its impetus from the spectacular and widely publicized failures of certain companies that would have been within the definition of "investment company" had they been federally incorporated. In the interests of perspective it would be well to consider the hundreds of millions of dollars that have been raised through public offerings in Canada of securities of "investment companies" since, say, World War II without losses to investors or any

suggestion of impropriety on the part of the issuers. Such figures ought to be available from the Dominion Bureau of Statistics or the Bank of Canada and would serve to put the situation into better perspective.

D. OTHER REGULATIONS AND CONTROLS

The business failures referred to above have accelerated revisions of provincial securities legislation to provide for fuller disclosures by such types of companies, have caused the Canadian Institute of Chartered Accountants to clarify the extent and manner to which the auditor of a holding company may rely upon the reports of other auditors as to the affairs of subsidiary companies, have increased the wariness of investment dealers, analysts and investment departments and impelled many companies to provide much fuller disclosure both in their prospectuses and in supplemental financial data supplied to the investment community; have, for example, caused the IDA in collaboration with the Federal Council of Sales Finance Companies to develop and bring into regular use the Canadian Sales Finance Long Form Report (a copy of which form is delivered herewith) to provide standard and detailed reporting by finance companies (permitting comparisons), have resulted in the appointment of a Royal Commission in Ontario to enquire into one of such failures and, generally, through required disclosures under securities legislation and through market vigilance have made a recurrence of such failures less likely. Underwriters and institutional investors have increasingly required the inclusion in trust deeds relating

to debt issues of tougher covenants relating to the maintenance of liquidity and tighter restrictions on the ratio of equity to debt. This type of control, based on statutory requirements as to disclosure, negotiated provisions and professional scrutiny by institutional investors or by underwriters on behalf of their clients, when based on recent and reliable financial information, has the advantage that it can be applied flexibly and before the event with respect to each issue and so avoids the rigidities likely to be inherent in certification and categorical regulation.

E. NATURE OF MARKET

It is a truism that a very high proportion of investments in debt securities are being made by institutional investors such as insurance companies, pension funds, and large corporations which either have or are valued clients of persons having professional investment departments.

The nature of the market is important because the rigidities and limitations on freedom implicit in Bill S-17 are in themselves costs and disadvantages which have to be justified, if at all, on the basis that they will effectively serve some more than counterbalancing public interest. The Bill would discriminate between "investment companies" and other types of commercial activity. There are cases where such discrimination is justified. For example the public interest in security for depositors in banks or trust

companies, for persons paying premiums on insurance policies or for estate assets under administration has extremely high priority and justifies stringent regulation even at the cost of rigidity and lower returns. But "investment company" as defined would cover a broad spectrum of commercial activity where there is a significant public interest in permitting business judgment to operate in a context of relative freedom and flexibility. The case for Bill S-17 in its present form does not appear to have been made.

F. SECTION 8

The Department admits, in its explanation for the deferral of the effective date of Part II that it does not know what the scope of the legislation will be. In this context Section 8, or at least that part of it that would prohibit loans to companies in which "any corporation that is a substantial shareholder of the (lending) company ... has an interest", is premature and should not come into effect until much more is known about the classes of transactions to be affected.

I would be pleased to answer any questions or give any further explanations in connection with the points of view expressed above and would be grateful if you would let me know whether you think it would be helpful if the IDA were to appear before your Committee.

Yours truly,

(sgd.) Stanley E. Nixon
President

CONSTITUTION AND BY-LAWS

Investment Dealers' Association
of Canada

November 1968

301/68

CONSTITUTION

1. The name of the Association shall be

INVESTMENT DEALERS' ASSOCIATION OF CANADA

2. The objects of the Association shall be:

- (a) to foster and sustain an environment favourable to saving and investment, thus encouraging the accumulation of capital needed for continued economic development, for a rising standard of living and for the productive employment of a growing population;
- (b) to encourage through self-discipline and self-regulation a high standard of business conduct among Members and to adopt, and enforce compliance with, such practices and requirements as may be necessary and desirable to guard against conduct contrary to the interests of Members, their clients or the public;
- (c) to establish, and enforce compliance with, capital, insurance and other requirements for the protection of Members, their clients and the public;
- (d) to provide a medium through which Members may confer among themselves on matters of common concern and through which they may undertake collective consultation and co-operation with governments, financial institutions and other associations;
- (e) to co-operate with and support governments in developing financial legislation for the furtherance of the public interest and to oppose such legislation when it is deemed contrary to the public interest;
- (f) to provide educational facilities to improve the professional competence of Members' employees, and to make available to the public information and instruction on saving and investment.

3. It is expressly declared that the Association is not formed for the purpose of affecting the price of government, municipal or corporation securities, nor to enable Members to form or effect combines, agreements or arrangements tending to affect the price of securities, nor shall the Association at any time discuss or take action upon questions which would in any way interfere with free and fair competition among Members in the business of buying, selling and dealing in securities.

4. The principal office of the Association may be in Toronto or in such other city as the National Executive Committee may from time to time determine. The By-laws of the Association may provide for the division of the Association into Districts.

5. Except as otherwise provided in the By-laws of the Association the National Executive Committee of the Association, constituted in such manner as the By-laws from time to time provide, shall be the governing body of the Association. The By-laws may provide for such other Committees, both National and District, constituted in such manner and having such powers and duties as the By-laws may from time to time prescribe.

6. The National Executive Committee may from time to time enact, amend, repeal and re-enact By-laws of the Association with respect to all matters pertaining to the conduct, administration, management and control of the affairs of the Association and of the various Districts of the Association and the furthering of the objects of the Association, including, without in any way limiting the generality of the foregoing, the conditions of eligibility for Membership in and of continuing as a Member of the Association; the rights and duties of and standards to be maintained by Members; the investigation of complaints against Members, the disciplining of Members and the imposition of penalties against Members, including fines, suspension and expulsion; and, generally, the enforcement of the By-laws of the Association and of Regulations made pursuant thereto.

7. By-laws enacted by the National Executive Committee and any amendment, repeal or re-enactment thereof shall be effective and shall remain in force only until the Annual or Special Meeting of the Association next following the date of the making of any such By-laws or of any such amendment, repeal or re-enactment, as the case may be, unless confirmed by resolution passed by the affirmative vote of at least two-thirds of the votes given thereon at such Meeting. If so confirmed any such By-law or any such amendment, repeal or re-enactment thereof shall continue in force thereafter subject to subsequent repeal or amendment as in this Constitution provided, but in default of confirmation at such Meeting as aforesaid shall at and from that time cease to have force or effect.

8. Until amended, repealed or added to in manner aforesaid, the present By-laws of the Association shall continue to be the By-laws of the Association.

9. This Constitution may be amended by resolution passed at a General or Special Meeting of the Association by the affirmative vote of at least three-fourths of the votes given on such resolution, provided that any such amendment shall first have been approved or recommended by the National Executive Committee. Notice of any proposed amendment shall be given to the Members at least thirty days prior to the Meeting.

BY-LAWS

BY-LAW No. 1

INTERPRETATION AND EFFECT

1.1 In these By-laws, unless the context otherwise requires, the expression:

- (a) "Affiliate of a Member" means a corporation or firm, as the case may be, which in the ordinary course of business buys and sells securities from and to the public and, in the case of a corporation,
 - (i) (I) more than 50% of the outstanding shares in the capital stock of the corporation carrying voting rights at any time when no contingency has occurred which confers voting rights upon any other shares in the capital stock of the corporation, or
 - (II) if any such contingency has occurred, then and for so long as such contingency continues, more than 50% of the outstanding shares in the capital stock of the corporation carrying voting rights, are owned or controlled by the Member; or
 - (ii) the directors, officers or principal shareholders of the corporation comprise the principal shareholders or a majority of the directors of the Member or a majority of the partners of the Member; and
 in the case of a firm, the partners of the firm comprise a majority of the partners of the Member or the principal shareholders or a majority of the directors of the Member.
- (b) "Annual Meeting" means the Annual Meeting of the Association;
- (c) "applicable" in relation to a District Executive Committee or a District Audit Committee means the District Executive Committee or District Audit Committee for the District in which the applicant for Membership or a Member has its principal office and in relation to a Business Conduct Committee means the Business Conduct Committee having jurisdiction in the District in which the Member has its principal office, except in any case as otherwise expressly provided in any By-law.
- (d) "Association" means the Investment Dealers' Association of Canada;
- (e) "Constitution" means the Constitution of the Association;
- (f) "investment character" in relation to a business means that at least 50% of the total gross profits of the business, or, if the applicable District Executive Committee in its discretion so approves, at least 50% of the total dollar volume of the business, results from or consists of the underwriting, distributing or buying and selling from and to the public in Canada, and either as principal or agent, of investment securities;
- (g) "investment securities" includes:
 - (i) government, municipal, hospital, school, corporation and religious institution bonds, debentures, notes and other securities not in default as to principal or interest;
 - (ii) preferred shares not in arrears of dividends;
 - (iii) such common shares with demonstrated earning power, whether or not dividend paying, such shares in investment companies and such other securities as the applicable District Executive Committee, with the concurrence of the National Executive Committee, may from time to time approve as investment securities;
- (h) "Managing Director" means the Managing Director of the Association;
- (i) "Member" means Member of the Association;
- (j) "Membership" means Membership in the Association;
- (k) "officer" includes Chairman of the Board, President, Vice-President, Secretary and Treasurer;

Amended
by instrument in
writing,
November
1968

- (l) "Principal Contributor of Capital" means an individual, firm or corporation having an interest, either directly or indirectly, to the extent of not less than 5% in the capital of a firm or corporation, whether by way of loan, guarantee, ownership or otherwise;
- (m) "recognized stock exchange" means any stock exchange designated by the National Executive Committee for the purposes of any one or more of these By-laws;
- (n) "registered representative" includes any person who trades in securities with the public in Canada other than a person who trades exclusively in securities which are authorized investments for trustees or trust funds in any Province in Canada;
- (o) "Regulations" means the Regulations of the National Executive Committee, and, where applicable, includes any Regulations of a District Executive Committee;
- (p) "Secretary" means the Secretary of the Association.
- (q) "securities commission" means, in any jurisdiction, the commission, person or other authority authorized to administer any legislation in force relating to the offering and/or sale of securities to the public and/or to the registration or licensing of persons engaged in trading securities.
- (r) "securities dealer" means an individual or corporation whose principal business consists of the underwriting, distributing or buying and selling from and to the public in Canada either as principal or agent of stocks, bonds and debentures.

1.2 Words importing the singular include the plural and vice versa, and words importing any gender include any other gender.

1.3 In the event of any dispute as to the intent or meaning of the Constitution or By-laws or Regulations, the interpretation of the National Executive Committee shall be final and conclusive.

1.4 The enactment of these By-laws shall be without prejudice to any right, obligation or action acquired, incurred or taken under the By-laws of the Association as heretofore in effect or under the Regulations passed pursuant thereto, and any proceedings taken under the By-laws as heretofore in effect or under such Regulations shall be taken up and continued under and in conformity with these By-laws and the Regulations as from time to time in effect so far as consistently may be.

BY-LAW No. 2**MEMBERSHIP**

2.1 The National Executive Committee shall, in its discretion, decide upon all applications for Membership but shall not consider or approve of any application unless and until it has been approved by the applicable District Executive Committee.

Amended 2.2 Any individual, firm or corporation carrying on or proposing to carry on
23/9/68 business in Canada shall be eligible to apply for Membership if

- (a) the applicant has carried on business as a securities dealer whose business has been of an investment character for a period of one year ending not more than 120 days prior to the date of application for Membership or, in case the business of the applicant has not been carried on for at least one year, if the applicant agrees that, if admitted to Membership, the business carried on by the applicant will be that of a securities dealer whose business will be of an investment character;
- (b) the applicant, in the case of an individual, or at least three-fifths in number of the partners of the applicant in the case of a firm, or at least three-fifths in number of the directors and three-fifths in number of the officers in the case of a corporation and three-fifths in number of the salesmen of the applicant have been continuously carrying on or engaged in or employed in the business of securities dealers whose business has been business of an investment character in Canada, or elsewhere if approved by the National Executive Committee in any particular case, for a period of at least five consecutive years preceding the date of application for Membership;
- (c) All directors of the applicant in the case of a corporation, or all partners of the applicant in the case of a firm are graduates of either The Canadian Securities Course or former Educational Course I of the Association, provided that any director or partner of an applicant may be exempted from this requirement by the National Executive Committee if such director or partner:—
 - (i) will not be involved in sales contacts with clients;
 - (ii) qualifies for exemption from the requirement that he take The Canadian Securities Course by virtue of an application made by him in the same manner and upon the same basis as an applicant for registration as a registered representative could obtain a like exemption under sub-division (ii), (iii) or (v) of Regulation 303; or
 - (iii) was, on July 1, 1967, a director or partner of a Member.
- (d) the applicant has such minimum amount of net free capital as Members are required to have and maintain under the By-laws and Regulations; and
- (e) the business of each firm or corporation which, if the applicant were a Member would be an Affiliate of the Member, and the business of the applicant, on a consolidated basis, are at the date of application for Membership and have been for a period of twelve months prior thereto business of an investment character.

2.3 For the purposes of this By-law, the business of an individual, firm or corporation having a head office or principal place of business outside of Canada but carrying on business at one or more branch offices in Canada means the portion only of the business relating to operations in Canada.

2.4 An application for Membership shall be in such form and executed in such manner as the National Executive Committee may prescribe and shall contain or be accompanied by such information and material as the By-laws, the National Executive Committee and the applicable District Executive Committee may require, including:

- (a) in the case of a firm, the names of all partners, in the case of a corporation, the names of all directors and officers, and in each case the names of all Principal Contributors of Capital, and if any such Principal Contributor of Capital is a firm or corporation the names of all the partners and Principal

Contributors of Capital of such firm or of all directors and officers and Principal Contributors of Capital of such corporation;

- (b) a statement of the business and financial history, arrangements, associations and affiliations of the applicant, or the partners of the applicant, in the case of a firm, or the directors and officers of the applicant, in the case of a corporation, for the five year period immediately prior to the date of application for Membership;
- (c) a description of the character of the business carried on or proposed to be carried on by the applicant and, except in the case of a business which has not been carried on for at least one year, such percentage breakdown of the total gross profits or, if the applicable District Executive Committee in its discretion so approves, of the total dollar volume of the business into such categories, and for such period, as the National Executive Committee and the applicable District Executive Committee may require;
- (d) the name of any association the members of which trade in securities of which the applicant or any partner, director or officer of the applicant is a member;
- (e) a statement that the applicant is or has applied to be registered or licensed as a dealer in securities under the applicable law of the Province or Provinces in which the applicant carries on or proposes to carry on business and that the applicant will be and remain so registered or licensed so long as it remains a Member;
- (f) an acknowledgment that the applicant has received a copy and is cognizant of the Constitution, By-laws and Regulations and an agreement that if admitted to Membership the applicant will comply therewith as from time to time in force;
- (g) a statement that no change in the ownership or control of the applicant is contemplated within the twelve months' period following the date of the application, or if no such statement may be made, a description of any contemplated change in ownership, including the names and addresses of all individuals, firms and corporations involved;
- (h) a description of all legal proceedings instituted, pending or threatened to which the applicant is, or to its knowledge may be, a party or of which any of its property is the subject.

Amended 23/9/68 2.5 An application for Membership with any accompanying material shall be submitted in duplicate to the Secretary, who shall make a preliminary review of the same and either:

- (a) if such review discloses substantial compliance with the requirements of the By-laws and Regulations, transmit one copy to the Chairman of the applicable District Executive Committee, or
- (b) if such review discloses any substantial non-compliance with the requirements of the By-laws and Regulations, notify the applicant as to the nature of such non-compliance and request that the application for Membership be amended in accordance with the notification of the Secretary and refiled or be withdrawn. If the applicant declines so to amend his application for Membership or to withdraw the same, the Secretary shall forward the same to the Chairman of the applicable District Executive Committee together with any accompanying material and a copy of his notification to the applicant.

2.6 The Secretary, upon instructions from the applicable District Executive Committee, shall notify all Members of the receipt of the application for Membership. Any Member may within fifteen days from the date of the mailing of such notification by the Secretary lodge with the Secretary an objection to the admission of the applicant and in such event the objection shall be referred for consideration to the applicable District Executive Committee.

Amended 23/9/68 2.7 The Secretary, upon instructions from the applicable District Executive Committee shall thereupon request the applicant to submit to the applicable District Association Auditors:

- (a) Financial statements of the applicant as of a date not more than 45 days prior to the date of application for Membership (or as of such earlier date as the applicable District Association Auditors may in their discretion permit), prepared in accordance with
 - (i) the form prescribed by the By-laws and Regulations and required to be filed annually by Members with the applicable District Association Auditors, or
 - (ii) if the applicant proposes to compute its capital and file financial statements in accordance with the requirements of a recognized stock exchange, the form prescribed by such recognized stock exchange;
- (b) If the financial statements prescribed by clause (a) above are audited, a report by the applicant's auditor (which shall be a person or firm acceptable to the applicable District Executive Committee) on such financial statements in the form prescribed for annual reports by Members' Auditors;
- (c) If the financial statements prescribed by clause (a) above are unaudited,
 - (i) financial statements of the applicant as of a date not more than 180 days prior to the date of application prepared in accordance with either of the forms referred to in clause (a) above;
 - (ii) a report by the applicant's auditor (which shall be a person or firm acceptable to the applicable District Executive Committee) on the financial statements referred to in sub-clause (i) above in the form prescribed for annual reports by Members' Auditors; and
 - (iii) a letter from the applicant's auditor relating to the financial statements referred to in clause (a) above in such form as shall be prescribed by the applicable District Association Auditors;
- (d) An additional report by the applicant's auditor to the effect that, based on his examination of the affairs of the applicant:
 - (i) as of the date of the financial statements prescribed by clause (a) above, the applicant has the minimum amount of net free capital required for Members under the By-laws and Regulations;
 - (ii) the applicant keeps a proper system of books and records;
 - (iii) all securities of a customer fully paid for and which have come into the possession of the applicant and are not subject to any lien or charge in favour of the applicant shall be segregated and distinguished as held in trust for the customer owning the same.
 - (iv) the applicant has in force the insurance prescribed for Members under the By-laws and Part II of the Regulations.
- (e) Such additional financial information, if any, relating to the Applicant as the applicable District Association Auditors may in their discretion request.

Amended 23/9/68 2.8 If and when such District Association Auditors have received the financial statements and the reports of the applicant's auditor referred to in By-law 2.7 and are satisfied as to the several matters mentioned in By-law 2.7 (d) (i) to (iv), then such District Association Auditors shall so notify the Secretary who shall forthwith thereafter notify the applicable District Executive Committee.

2.9 Upon notification of the Members by the Secretary pursuant to By-law 2.6 and the expiration of the fifteen day period referred to therein and upon receipt of the notification from the District Association Auditors pursuant to By-law 2.8, the applicable District Executive Committee in its discretion may either disapprove the application or, at the expiration of a period of six months or of such lesser period as such Committee in any particular case may determine, may approve the application, notwithstanding any objection thereto that may have been made by any Member.

Amended 23/9/68 2.10 If and when the application is approved by the applicable District Executive Committee, the Secretary shall obtain the recommendation of the Chairman of such District Executive Committee as to the proper Annual Fee for the applicant and for such purpose the Chairman shall consult the Managing Director.

Amended 23/9/68 2.11 The Secretary shall submit to the next succeeding meeting of the National Executive Committee each application which has been approved by the applicable District Executive Committee, together with the recommendation of the Chairman of such District Executive Committee as to the Annual Fee for the applicant.

Amended 23/9/68 2.12 The National Executive Committee shall thereupon consider the application at such meeting at which its decision as to admission of the applicant and the Annual Fee payable by it shall be expressed by resolution passed by the affirmative vote of at least a majority of all of the members of the National Executive Committee.

2.13 If and when the application has been approved by the National Executive Committee and the applicant has been duly licensed or registered as a dealer in securities under the applicable law of the Province or Provinces in which the applicant carries on or proposes to carry on business, and upon payment of the Entrance Fee and Annual Fee, the applicant shall become and be a Member.

2.14 Notwithstanding the foregoing, if an applicant qualifies for exemption from payment of the Entrance Fee and if the applicable District Executive Committee approves of such exemption and gives its approval to the application for Membership, the applicant shall be admitted to Membership without reference to the National Executive Committee for final decision if all other conditions relating to an application for Membership have been duly complied with except such conditions, if any, as such applicable District Executive Committee, with the written approval of the President, may deem appropriate to be waived under the circumstances of any particular case.

Enacted by instrument in writing April 1968 2.14A Notwithstanding the provisions of By-Laws 2.6, 2.9, 2.11, 2.12 and 2.13, wherever an applicant for Membership is an affiliate of a Member (as defined) which confirms its intention to continue its Membership in the Association, the applicable District Executive Committee shall promptly, after receipt of notification by the District Association Auditors, as provided in By-Law 2.8, either approve or disapprove the application and notify the Secretary of their decision. The Secretary shall thereupon notify by writing each member of the National Executive Committee and the National Executive Committee may, in its discretion, forthwith approve the application by instrument in writing signed by a majority of the members thereof.

2.15 A Certificate of Membership signed by the President or any member of the National Executive Committee and by the Managing Director or Secretary, may be issued to a Member upon admission to Membership.

Amended 23/9/68 2.16 The Secretary shall keep a register of the names and business addresses of all Members and of their respective Annual Fees. The Annual Fees of Members shall not be made public by the Association.

2.17 The Secretary shall furnish to the securities commissions of all the Provinces of Canada a list of Members, including in a separate division thereof the names of Non-Resident Members, and from time to time as changes occur in the Membership shall communicate such changes to such commissions. Any such list shall indicate or be accompanied by a letter or memorandum indicating that the By-laws, unless otherwise specifically provided, do not apply to Non-Resident Members and that Non-Resident Members are not obliged to furnish financial statements to the Association.

BY-LAW No. 3**ENTRANCE AND ANNUAL FEES**

3.1 The Entrance Fee shall be \$1,000.

3.2 The Annual Fee for each Member shall be such amount, not less than \$500 nor more than \$4,000 as the Budget and Investment Committee in its discretion may determine, having regard to the size and character of the business of the Member. The Budget and Investment Committee may from time to time re-determine the Annual Fee to be payable by each Member, provided that any such re-determination shall not take effect before the fiscal year of the Association next following the fiscal year of the Association in which such re-determination has been made. Before any such determination or re-determination is made, the Budget and Investment Committee shall obtain, but shall not be obliged to act upon, the recommendation of the Chairman of the applicable District Executive Committee.

3.3 Such Annual Fee shall be paid in advance by each Member not later than the 1st day of May in each year and notice of the Annual Fee payable shall be mailed to each Member on or about the next preceding 1st day of March; provided that if an applicant for Membership is approved by the National Executive Committee at any time between September 30th and December 31st in any year, the Annual Fee for the balance of the fiscal year shall be one-half of the Annual Fee, and if between December 31st and March 31st, the Annual Fee for the balance of the fiscal year shall be one-quarter of the Annual Fee.

3.4 Notwithstanding the foregoing, in the event that:

- (a) an applicant for Membership has acquired the whole or a substantial part of the business and assets of a Member or Members in good standing whose Annual Fee for the then current fiscal year has been paid in full and who is or are resigning from Membership concurrently with the admission of the applicant to Membership, and
- (b) at least a majority in number of the partners of the applicant, in the case of a firm, or at least a majority in number of the directors and at least a majority in number of the officers of the applicant, in the case of a corporation, are partners, or directors and officers, as the case may be, of the retiring Member or Members,

then the applicant, if the applicable District Executive Committee so approves, shall be exempted from payment of the Entrance Fee and from payment of the Annual Fee for the then current fiscal year.

3.5 Notwithstanding By-law 3.2 the National Executive Committee shall have power to make an assessment in any fiscal year upon each Member not to exceed 50% of the Annual Fee payable in such year by such Member. Each Member shall pay the amount so assessed upon it within thirty days after receiving written notification thereof from the Secretary.

3.6 If the required Annual Fee of a Member has not been paid by the first day of July in any year, or the amount assessed upon any Member pursuant to By-law 3.5 has not been paid within thirty days after the Member has received written notification thereof from the Secretary, the Secretary shall, by registered mail, request the Member to pay the same and draw the Member's attention to the provisions of this By-law 3.6. If the entire amount owing by the Member has not been paid within thirty days from the date the Secretary has mailed his request the Secretary shall notify the National Executive Committee to this effect and the National Executive Committee may, in its discretion, terminate the Membership of the Member in default. If the National Executive Committee decides to terminate the Membership of a Member pursuant to the provisions of this By-law 3.6 the Secretary will be requested to notify the Member, by registered mail, of the decision of the National Executive Committee. A former Member whose Membership has been terminated pursuant to the provisions of this By-law 3.6 shall cease to be entitled to exercise any of the rights and privileges of Membership but shall remain liable to the Association for all amounts due to the Association from the former Member.

BY-LAW No. 4

BRANCH OFFICE MEMBERS

4.1 Where any Member has one or more branch offices having a manager and staff either in the District in which the principal office of such Member is situated or in any other District, each such branch office shall be a Branch Office Member.

4.2 No Entrance Fee or Annual Fee shall be payable in respect of any Branch Office Membership.

4.3 A Branch Office Member shall have the same privileges in its District as any other Member except that at all District meetings each Member shall have one vote only in respect of all its offices, whether principal or branch, in the District.

4.4 The representative of any Branch Office Member in any District shall be eligible for election as Chairman or member of the District Executive Committee of such District.

4.5 Each Branch Office Member shall be entitled to send one or more representatives to the Annual Meeting.

BY-LAW No. 5**NON-RESIDENT MEMBERS**

5.1 Any member in good standing of the Investment Bankers Association of America which does not carry on business in Canada or have a branch office in Canada may be admitted as a Non-Resident Member.

5.2 An application for Non-Resident Membership shall be made in writing addressed to the Secretary and shall be submitted to the National Executive Committee, which may, in its discretion, either approve or reject the same.

5.3 Upon approval of any such application by the National Executive Committee and upon payment by the applicant of the prescribed Entrance Fee and Annual Fee, the applicant shall become a Non-Resident Member.

5.4 The Entrance Fee for a Non-Resident Member shall be \$50 and the Annual Fee for a Non-Resident Member shall be \$200 or such other sum as the National Executive Committee may from time to time determine.

5.5 A certificate of Non-Resident Membership signed by the President or any member of the National Executive Committee and by the Managing Director or the Secretary may be issued to a Non-Resident Member upon admission to Non-Resident Membership.

5.6 The Secretary shall keep a separate register of the names and business addresses of all Non-Resident Members.

5.7 Every Non-Resident Member shall be entitled to receive notice of and to send a representative to the Annual Meeting and shall be placed on the regular mailing list of the Association, but no Non-Resident Member nor any representative of a Non-Resident Member shall be entitled to vote at any such meeting or be appointed to the National Executive Committee or any other Committee of the Association or of any District or to have any other privileges as a Member.

5.8 The By-laws shall not be applicable to Non-Resident Members unless otherwise specifically provided therein.

5.9 The National Executive Committee shall have power from time to time in its discretion to forfeit the Membership of a Non-Resident Member or to suspend the rights and privileges of such Non-Resident Member for such period and upon such terms as the National Executive Committee may determine, and there shall be no appeal from any such decision of the National Executive Committee.

BY-LAW No. 6**MAINTENANCE OF CHARACTER OF BUSINESS**

6.1 Every Member and every Affiliate of a Member shall continue to carry on business in such a way that the business of the Member, or if the Member has Affiliates, the business of the Member and its Affiliates, on a consolidated basis, is business of an investment character, and whenever required by the applicable District Executive Committee, the Member shall establish to the satisfaction of such Committee that its business, or its business and the business of its Affiliates, on a consolidated basis, as the case may be, continues to be of such character.

6.2 A Member shall, if and when requested by the applicable District Executive Committee or the National Executive Committee, file a report with such Committee within such time as may be specified in such request, showing the percentage breakdown of the total gross profits of the Member or of the Member and its Affiliates, on a consolidated basis, if the Member has Affiliates or, if the Committee in its discretion so approves, of the total dollar volume of the business of the Member or of the Member and its Affiliates, on a consolidated basis, if the Member has Affiliates, in all cases for any period specified by the Committee within the twelve month period next preceding the date of the request, or, at the option of the Member, for the whole of such twelve month period into the following categories, namely:

- (i) treasury bills, bonds, debentures and notes; and
- (ii) shares.

6.3 Where it appears from any such report that the business in shares of the Member or the Member and its Affiliates, as the case may be, resulted in or comprised more than 50% of the total gross profits or total dollar volume, as the case may be, of the business of the Member or of the Member and its Affiliates, on a consolidated basis, as the case may be, for such period, the Member shall show separately the percentage breakdown as to gross profits or dollar volume as the case may be, of its or their business, as the case may be, in shares into

- (i) preferred shares not in arrears of dividends;
- (ii) common shares with demonstrated earning power whether or not dividend paying;
- (iii) shares in investment companies;
- (iv) other shares;
- (v) such other categories as the Committee may require.

6.4 A Member which at the time of application for Membership had not been carrying on business in Canada for at least one year, shall also file with the applicable District Executive Committee a report in respect of each successive six month period during the two years next following its admission to Membership containing the information prescribed by By-law 6.2 and, if applicable, by By-law 6.3. Each such report shall be so filed within thirty days after the expiration of the six month period to which the report relates.

6.5 If it appears to the applicable District Executive Committee or to the National Executive Committee from any report required to be filed with such Committee that the business of the Member, or if the Member has Affiliates, the business of the Member and its Affiliates, on a consolidated basis, was not of an investment character for the period covered by the report, then such Committee shall by written notice to the Member require the Member on or before such date (hereinafter called the "review date") as such Committee may in its discretion specify to satisfy such Committee that the business of the Member, or of the Member and its Affiliates, on a consolidated basis, as the case may be, in respect of a period of twelve months, or such longer period as such Committee may approve terminating not more than 120 days before the review date, is of an investment character. Any such notice from such Committee may also require the Member prior to the review date to file such interim report or reports, covering such period or periods, as to the character of the business of the Member, or of the Member and its Affiliates, on a consolidated basis, as the case may be, as such Committee in its discretion may specify.

Amended
by instru-
ment in
writing,
November
1968

6.6 If the Member fails to satisfy the applicable District Executive Committee or the National Executive Committee, as the case may be, in accordance with By-law 6.5, on or before the review date, the applicable Business Conduct Committee shall be so informed and such failure shall constitute failure to comply with By-law 6.

BY-LAW No. 7**CHANGES IN PARTNERS, DIRECTORS AND PRINCIPAL CONTRIBUTORS OF CAPITAL**

7.1 Within three days after any change is made in the partners, directors, officers or Principal Contributors of Capital of a Member or, in case any such Principal Contributor of Capital is a firm or corporation, within three days after any change is made in the partners of such firm or in the directors or Principal Contributors of Capital of such corporation, and before making any public announcement of any such change, the Member shall give written notice thereof to the Secretary and as to the length of time any new partner, director or Principal Contributor of Capital has been continuously engaged in business as an investment dealer and giving such other information concerning any such change as may be required under any Regulations and requesting approval of such change by the applicable District Executive Committee.

7.2 The Secretary shall forthwith forward such notice or a copy thereof to the Chairman of such District Executive Committee who may in his discretion either approve such change or refer the request for such approval to such District Executive Committee and who shall forthwith advise the Secretary of such approval or reference.

7.3 The District Executive Committee may in its discretion approve or reject any request for approval referred to it and the decision of such Committee shall be forthwith communicated to the Member and to the Secretary.

7.4 If any such change involves the election or appointment of a new director or admission of a new partner of a Member, no approval shall be given under By-law 7.2 or 7.3 unless such new director or partner

- (a) will not be involved in sales contacts with clients, or
- (b) is a graduate of either The Canadian Securities Course or former Educational Course I of the Association, or
- (c) has been exempted from the requirement that he take The Canadian Securities Course by virtue of an application made by him in the same manner and upon the same basis as an applicant for registration as a registered representative could obtain a like exemption under subdivision (ii), (iii) or (v) of Regulation 304; or
- (d) was, on July 1, 1967, a director or partner of a Member.

7.5 If the District Executive Committee does not approve any such change and the Member concerned does not rescind such change within such time as may be specified by the Committee, the Committee may in its discretion recommend to the National Executive Committee that the Member be required to apply for continuance of Membership and the National Executive Committee may in its discretion so require, in which case the Secretary shall so notify the Member in writing stating the time within which the National Executive Committee has required the Member to apply for continuance of Membership.

7.6 The Member shall thereupon make application for continuance of Membership within the time required by the National Executive Committee. Such application shall be made and dealt with in the same way as an application for Membership under By-law 2, except that:

- (a) no additional Entrance Fee or Annual Fee for the then current fiscal year shall be payable; and
- (b) the application may be approved by the applicable District Executive Committee without reference to the National Executive Committee for final decision if all other conditions relating to an application for Membership have been duly complied with.

7.7 If an application for continuance of Membership is disapproved by the District Executive Committee, the Member shall have the right within ten days after receiving notice of such disapproval to appeal therefrom to the National Executive Committee. The National Executive Committee may approve or disapprove of such application and its decision shall be final.

7.8 If the Member does not apply for continuance of Membership within the time required by the National Executive Committee or within such further period, if any, as the applicable District Executive Committee may permit, or if the application of the Member is disapproved by the applicable District Executive Committee and, in case of an appeal, by the National Executive Committee, the Membership of the Member shall thereupon terminate.

7.9 The Secretary shall be informed promptly of any such approval or disapproval of the District Executive Committee and of the National Executive Committee and shall thereupon notify the Member thereof by registered mail.

7.10 Any Member whose Membership terminates in accordance with By-law 7.8 shall be entitled to a pro rata refund of the Annual Fee in respect of the unexpired balance of the current fiscal year.

BY-LAW No. 8**RESIGNATION FROM MEMBERSHIP**

8.1 A Member wishing to resign shall address a letter of resignation to the National Executive Committee in care of the Secretary.

Amended
23/9/68

8.2 A Member which tenders its resignation shall in its letter of resignation state its reasons for resigning and shall file with the District Association Auditors of the District in which the Member has its principal office either

- (i) a balance sheet of the Member reported upon by the Member's Auditor without qualification as of such date as such District Association Auditors may require; or
- (ii) a report from the Member's Auditor without qualification that in his opinion the Member has liquid assets sufficient to meet all its liabilities other than subordinated loans, if any;

and a report from the Member's Auditor that clients' free securities are properly segregated and earmarked.

8.3 Notice of such letter of resignation shall forthwith be given by the Secretary to the National Executive Committee, the applicable District Executive Committee, all other Members, the securities commissions of all of the Provinces in Canada and the Bank of Canada.

8.4 Unless the National Executive Committee, in its discretion otherwise declares, a resignation shall take effect as of the close of business (5.00 p.m. Head Office local time) on the date the Secretary receives from the District Association Auditors a written statement certifying that, in their opinion, based on the balance sheet and/or reports referred to in By-law 8.2 the Member has liquid assets sufficient to meet all its liabilities other than subordinated loans, if any, and if, to the knowledge of the Secretary after due enquiry, the Member is not indebted to the Association and no complaint against the Member or any investigation of the affairs of the Member is pending.

Amended
by instru-
ment in
writing,
November
1968

8.5 If no such resignation has taken effect within six months after the date of receipt by the Secretary of the letter of registration, the Secretary shall so notify the applicable Business Conduct Committee and that Committee may, on not less than fourteen days' notice to the Member, require the Member to appear before such Business Conduct Committee to show cause why it should not be expelled from the Association. At such appearance, the Member shall be entitled to be represented by Counsel and to call, examine and cross-examine witnesses. If the Member fails to appear, the applicable Business Conduct Committee may forthwith expel the Member from the Association and the decision of the applicable Business Conduct Committee shall be final.

8.6 When the resignation of a Member becomes effective the Secretary shall so advise the Member resigning and all other Members, the National Executive Committee, the securities commissions of all of the Provinces of Canada, the Bank of Canada, all District Association Auditors, and such other persons or bodies as the applicable District Executive Committee may direct.

8.7 A Member resigning from the Association shall not be entitled to a refund of any part of the Annual Fee for the fiscal year in which its resignation becomes effective; provided that where the resignation of a Member does not become effective until the fiscal year next following the fiscal year in which its letter of resignation was tendered, the resigning Member shall not be liable to pay any part of the Annual Fee for the fiscal year in which its resignation becomes effective.

8.8 A Member resigning from the Association shall surrender to the Secretary its Certificate of Membership.

Enacted 8.9 The National Executive Committee may, in its discretion terminate the
24/9/68 Membership of any Member which has ceased to carry on business as a security dealer or whose business has been acquired by an individual, firm or corporation who or which, as the case may be, is not a Member of the Association. If the National Executive Committee decides to terminate the Membership of a Member pursuant to the provisions of this By-law 8.9 the Secretary will be requested to notify the Member, by registered mail, of the decision of the National Executive Committee. A former Member whose Membership has been terminated pursuant to the provisions of this By-law 8.9 shall cease to be entitled to exercise any of the rights and privileges of Membership but shall remain liable to the Association for all amounts due to the Association from the former Member.

BY-LAW No. 9

DISTRICTS

9.1 For the purposes of the Association there shall be a division into 6 Districts, as follows:

- (i) the Pacific District composed of the Province of British Columbia;
- (ii) the Alberta District composed of the Province of Alberta;
- (iii) the Mid-Western District composed of the Provinces of Saskatchewan and Manitoba;
- (iv) the Ontario District composed of the Province of Ontario;
- (v) the Quebec District composed of the Province of Quebec;
- (vi) the Atlantic District composed of the Provinces of New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland.

BY-LAW No. 10**NATIONAL COMMITTEES**

10.1 There shall be a National Executive Committee of the Association composed of the President, the immediate Past President, the First Vice-President, the Vice-Presidents of the Association, the immediate Past Chairman of the Ontario District Executive Committee and the immediate Past Chairman of the Quebec District Executive Committee. In the event that any person shall hold the office of President for two successive years, the immediate Past President shall continue to be a member of the National Executive Committee during such President's second year of office.

10.2 A meeting of the National Executive Committee may be convened by the Secretary at the request of the President or, in his absence, of the First Vice-President, or at the written request of three members of the National Executive Committee, at such time and place as may be fixed in the notice convening the meeting. At least seven days' notice shall be given to each member of the Committee. A meeting of the National Executive Committee may be held immediately following the Annual Meeting without notice, notwithstanding that one or more members of the Committee may not be present at the Annual Meeting.

10.3 A member of the National Executive Committee may by writing appoint a proxy to attend and vote for him at any meeting of the Committee. Such proxy shall be a partner of such member or an officer of the corporation represented by such member or any member of the National Executive Committee or of the District Executive Committee of which he is a member.

10.4 Three members of the National Executive Committee present in person shall form a quorum at any meeting thereof and any action taken by a majority of those members of the Committee present at any meeting of the Committee at which a quorum is present shall constitute the action of the Committee.

10.5 At any meeting of the National Executive Committee where there is a tie vote on any matter before the Committee, the President shall have a casting vote in addition to his vote as a member of the Committee.

10.6 A By-law, Regulation or resolution consented to in writing by all the members of the National Executive Committee shall be as effective as if passed at a duly constituted meeting of the Committee unless otherwise provided in any By-law.

10.7 There shall be a National Business Conduct Committee of the Association composed of the five most recent Past Presidents of the Association who are Members or partners, directors or officers of Members. In the event of the death, resignation or incapacity to act of any member of the Committee the next most recent Past President who is a Member or a partner, director or officer of a Member shall take the place of such member.

10.8 Meetings of the National Business Conduct Committee shall be held at such times, at such places, upon such notice, and in accordance with such procedure, as the Committee in its discretion may determine. The most recent Past President of the Association present at any meeting of the Committee shall be the Chairman of the meeting.

10.9 Three members of the National Business Conduct Committee present in person shall form a quorum at any meeting thereof and any action taken by a majority of those members of the Committee present at any meeting of the Committee at which a quorum is present shall constitute the action of the Committee.

10.10 Each of the National Executive Committee and the National Business Conduct Committee may employ such legal, secretarial or other assistance as it may require.

10.11 Any notice to any National Committee may be in writing addressed to the Committee in care of the Secretary at the principal office of the Association.

Amended
23/9/68

10.12 There shall be a Budget and Investment Committee of the Association composed of the President, the immediate Past President, the first Vice-President, the Chairman of the Ontario District Executive Committee, the Chairman of the Quebec

District Executive Committee, the Managing Director or his nominee and, from the date of his appointment by the National Executive Committee, the President-Elect.

10.13 A meeting of the Budget and Investment Committee may be convened at any time by the President or by the Secretary at the request of the President at such time and place as may be fixed in the notice convening the meeting. At least seven days' notice of the meeting shall be given to each member of the Committee.

10.14 Three members of the Budget and Investment Committee present in person shall form a quorum at any meeting thereof and any action taken by a majority of those members of the Committee present at any meeting of the Committee at which a quorum is present shall constitute the action of the Committee.

10.15 A resolution of the Budget and Investment Committee consented to in writing by all the members of the Committee shall be as effective as if passed at a duly constituted meeting of the Committee.

10.16 The National Executive Committee and the President respectively may appoint such Sub-Committees and for such purposes as either of them may in its or his discretion decide. The life of any such Sub-Committee shall not extend beyond the first Annual Meeting next following its appointment.

10.17 to 10.20 inclusive enacted by instrument in writing November 1968

10.17 There shall be a President's Committee of the Association composed of the President, the First Vice-President and such Vice-President or Vice-Presidents as may from time to time and for such periods of time be designated for the purpose by the President. The Managing Director shall be an ex officio non-voting member of the President's Committee.

10.18 Meetings of the President's Committee shall be held at such times, at such places, upon such notice and in accordance with such procedure as the President in his discretion may determine. The President, or in his absence the First Vice-President, shall act as Chairman at all such meetings. A quorum for a meeting of the President's Committee shall consist of three members entitled to vote thereat, and all decisions made or actions taken at any such meeting shall require the unanimous approval of those members present and entitled to vote thereat.

10.19 Subject to By-law 10.20 the President's Committee shall be vested with and may exercise all or any of the powers conferred by the By-laws and Regulations upon the National Executive Committee.

10.20 Any decision made or action taken at a meeting of the President's Committee shall be promptly communicated by telephone, wire or other appropriate means to each member of the National Executive Committee who was not present at such meeting, provided that it shall not be necessary to communicate any such decision or action to any member who, to the knowledge of the President or the Managing Director, cannot reasonably be expected to receive the same within twenty-four hours after such meeting. Unless within twenty-four hours after such meeting a majority of the members of the National Executive Committee have communicated to the Managing Director their disapproval of the decision made or action taken at such meeting, such decision or action, as the case may be, shall be deemed to be the decision or action of the National Executive Committee.

BY-LAW No. 11**DISTRICT COMMITTEES AND MEETINGS**

11.1 There shall be a District Executive Committee for each District which, subject to the By-laws, shall have supervision over the affairs of such District. Each District Executive Committee shall be composed of from four to fourteen members, including a Chairman and exclusive of ex-officio members, as may be determined at the annual meeting of Members of the District called to elect the Committee. The immediate Past Chairman of a District shall be an ex-officio member thereof. The President of the Association shall be ex-officio a member of the District Executive Committee for the District in which he resides.

11.2 The Chairman of a Group Committee in a District shall be ex-officio a member of the District Executive Committee and either with or without voting power, as may be determined at the annual meeting of Members of the District.

11.3 Each District Executive Committee may make and from time to time amend or repeal such Regulations, not inconsistent with the Constitution or By-laws or Regulations of the National Executive Committee, as it deems advisable for the organization and management of the affairs of such District. Regulations made by a District Executive Committee shall be effective and remain in force unless and until amended or repealed and all such Regulations for the time being in force shall be binding upon all members of the District.

11.4 Each District Executive Committee shall meet at least once in each calendar month unless the Chairman otherwise determines and shall report to the Secretary forthwith after each meeting in respect of any matters brought up at such meeting affecting the interests of the Association and shall from time to time report on all matters affecting the interests of the Association within its District. The Secretary shall submit all such reports to the National Executive Committee.

11.4A Each District Executive Committee shall at its first meeting after the Annual Meeting, select in accordance with By-law 16.3 a panel of Members' Auditors for the ensuing year.

11.5 The Chairman or any two members of a District Executive Committee may call a special meeting of such Committee at any time.

11.6 A voting member of a District Executive Committee may by writing appoint a proxy to attend and vote for him at any meeting of such Committee. Such proxy shall be a partner of such member, or an officer of the corporation represented by such member or any member of the District Executive Committee.

11.7 Three members of a District Executive Committee present in person shall form a quorum at any meeting thereof and any action taken by a majority of those members of the Committee present at any meeting of the Committee at which a quorum is present shall constitute the action of the Committee.

11.8 Unless otherwise provided in the By-laws, a District Executive Committee shall not act for or in the name of the Association and shall not have any power to bind the Association except as may be authorized by resolution of the National Executive Committee.

11.9 There shall be a District Audit Committee for each District composed of the Chairman of the District Executive Committee and two other persons appointed by the Chairman who are partners, directors or officers of Members of the District and the Managing Director who shall be a non-voting member of the District Audit Committee of each District. The Chairman shall report confidentially to the Secretary and to the District Association Auditors of the District the names of the two persons so appointed.

11.10 Two members of a District Audit Committee present in person shall form a quorum at any meeting thereof and any action taken by any two members of the Committee present at any meeting of the Committee shall constitute the action of the Committee.

11.11 There shall be an Eastern Business Conduct Committee which shall have jurisdiction in the Ontario, Quebec and Atlantic Districts and a Western Business Conduct Committee which shall have jurisdiction in the Pacific, Alberta and Mid-

Amended
by instrument in
writing,
November
1968

Western Districts. Each Business Conduct Committee shall be composed of ten Members or partners of Member firms, or directors or officers of Member Corporations with experience in the investment business and the Managing Director, who shall be a non-voting member. At its first meeting following the Annual Meeting, the National Executive Committee shall appoint a Chairman and nine other members of each Business Conduct Committee, who shall hold office until the next ensuing Annual Meeting. A retiring member shall be eligible for re-appointment. Neither the President nor any Past President of the Association shall be eligible as a member of either Business Conduct Committee. Vacancies from time to time occurring in the membership of a Business Conduct Committee may be filled by the National Executive Committee.

*Amended
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ment in
writing,
November
1968

11.12 Meetings of each Business Conduct Committee shall be held at such times, at such places, upon such notice and in accordance with such procedure, as such Business Conduct Committee in its discretion may determine.

IDEM

11.13 For any meeting of a Business Conduct Committee the quorum shall be three members (not including the Managing Director), who shall be selected for the purpose by the Chairman of such Business Conduct Committee, provided that at any such meeting at least one of such members shall reside in a District other than (i) the District in which the Member in respect of whom such meeting is held has its principal office or (ii), in the case of a meeting held pursuant to By-law No. 18, the District in which the registered representative is acting as such or in which the applicant for registration proposes to act as a registered representative. At any such meeting any action taken by a majority of those members present and entitled to vote shall constitute the action of the Business Conduct Committee.

IDEM

11.14 Each Business Conduct Committee may employ such legal, secretarial or other assistance as it may require.

IDEM

11.15 Any notice to a Business Conduct Committee may be in writing addressed to the Committee in care of the Secretary at the principal office of the Association.

11.16 Each District Executive Committee may appoint the following Standing Committees for its respective District to deal with the following matters:

- (i) Education
- (ii) Provincial Government Legislation
- (iii) Municipal Administration and Finance
- (iv) Taxation
- (v) Public Relations
- (vi) Speakers' Panel
- (vii) Stock Exchange Liaison

and may combine any two, but not more, of such Standing Committees into one Committee, in which case the Committee shall bear a suitable name indicating that it is a Joint Standing Committee.

11.17 Each Standing Committee, including a Joint Standing Committee, shall consist of not less than three members, including one of the members of the District Executive Committee who shall be the Chairman of such Standing Committee. The number of members of any Standing Committee which shall constitute a quorum at any meeting thereof shall be determined by the District Executive Committee.

11.18 The Chairman of each District Standing Committee shall be appointed by the incoming District Executive Committee immediately after the latter has been elected, and the members of each such District Standing Committee shall be ap-

pointed as soon as practicable thereafter. The Chairman of each District Standing Committee shall report to the Secretary at least three weeks before the Annual Meeting the names of the members of the Committee of which he is Chairman.

11.19 Each District Executive Committee may also appoint such other Sub-Committees and for such other purposes within its District as it may in its discretion decide.

11.20 With the concurrence of the National Executive Committee any District Executive Committee may authorize a Group Committee for any City within its respective District. A Group Committee shall bear the name of the City for which it is authorized coupled with the word "Group". Each such Group Committee and the Chairman thereof shall be elected by the local Members in the City concerned.

11.21 The life of any Standing Committee or other District Sub-Committee shall not extend beyond the term of office of the District Executive Committee by which it is appointed or authorized.

11.22 A meeting of the Members of any District may be called by the District Executive Committee and shall be called by such Committee on the requisition in writing of seven Members of such District. Notice of the time and place of any such meeting shall be given to the Members of the District.

11.23 Voting at any meeting of the Members of a District may be carried out in the same manner as provided for voting at meetings of the Association and proxies for such purpose shall be lodged with the Chairman of the District Executive Committee.

BY-LAW No. 12**OFFICERS AND THEIR DUTIES**

12.1 The officers of the Association shall be the President, the First Vice-President, the Vice-Presidents, the Managing Director, the Director of Education, the Secretary, and such other officer or officers as the Association may determine, including an Honorary President, an Honorary Vice-President and an Honorary Treasurer. The Honorary President, the Honorary Vice-President, the Honorary Treasurer, the Managing Director, the Director of Education and the Secretary shall be appointed by the National Executive Committee. All officers other than the Managing Director, the Director of Education, the Secretary and any other officers appointed to the permanent staff of the Association shall be Members or partners, directors, officers or branch managers of Members.

12.2 The President shall preside at meetings of the Association and of the National Executive Committee, and shall perform such other duties as are required of him by the By-laws.

12.3 The First Vice-President shall work with and assist the President in the performance of his duties and shall carry out such other duties as the President or the National Executive Committee may direct, but shall not, except to the extent that the National Executive Committee may from time to time direct, perform duties of the District Executive Committees or any officers thereof.

12.4 Each Chairman of a District Executive Committee shall be a Vice-President and shall, in addition to the performance of his duties as such Chairman, assist the President in the performance of his duties.

12.5 The Managing Director shall have such authority and responsibility for the management and development of the interests and objectives of the Association and shall perform such duties as are required of him or delegated to him by the By-laws or by the National Executive Committee or by the President.

12.6 The Director of Education shall have such authority and responsibility for the management and development of the internal and external education programmes of the Association and shall perform such duties as are required of him or delegated to him by the By-laws or by the National Executive Committee or by the President or by the Managing Director.

12.7 The Secretary shall have charge of the minute books and other books and records of the Association, shall conduct the correspondence of the Association, and shall perform such other duties as are required of him or delegated to him by the By-laws or by the National Executive Committee or by the President or by the Managing Director.

12.8 An Auditor for the Association shall be appointed every year at the Annual Meeting, who shall audit the accounts of the Association.

BY-LAW No. 13**ELECTION OF OFFICERS OF ASSOCIATION AND OF
DISTRICT EXECUTIVE COMMITTEE MEMBERS**

13.1 The President shall take office at the Annual Meeting and his term of office shall continue until the next ensuing Annual Meeting. The President shall be a Member, a partner of a Member firm, or a director of a Member corporation. Unless he shall take the office of President by virtue of By-law 13.2, the President shall, subject to By-law 13.3, be appointed by the National Executive Committee, after consultation with the Nominating Committee, at least one month prior to the Annual Meeting.

13.2 The First Vice-President shall take office at the Annual Meeting or if there is no First Vice-President in office at the time of his appointment, then at the time of such appointment, and his term of office shall continue until the next ensuing Annual Meeting when, subject to By-law 13.3, and subject to the President in office not having been reappointed under By-law 13.8, he shall assume the office of President. The First Vice-President shall be a Member, a partner of a Member firm, or a director of a Member corporation. The First Vice-President shall be appointed by the National Executive Committee, after consultation with the Nominating Committee, prior to the Annual Meeting.

13.3 Notwithstanding By-law 13.2, the National Executive Committee may nominate one or more persons for the office of President and may submit the nominations, together with the name of the First Vice-President, to the Annual Meeting which shall elect the person or one of the persons so nominated or the First Vice-President as President.

13.4 The Nominating Committee shall consist of the last five Past Presidents of the Association. The Immediate Past President shall be the Chairman of the Nominating Committee. It shall be the duty of the Nominating Committee to make one or more nominations to the National Executive Committee for the office of First Vice-President or, whenever requested by the National Executive Committee, for the office of President, and the National Executive Committee may, but shall not be bound to, appoint as First Vice-President or President, as the case may be, any person so nominated.

13.5 If, at any Annual Meeting, the office of First Vice-President was, immediately prior to such Annual Meeting, vacant and the National Executive Committee has, prior to such Annual Meeting, failed to appoint a President and failed to nominate persons whose names may be submitted to the Annual Meeting, nominations for the office of President may be made at such Annual Meeting, and the President shall be elected at such Annual Meeting from among the persons so nominated.

13.6 No person shall hold the office of President for more than two terms in succession.

13.7 In the event of a vacancy in the office of President caused by the death, resignation or disability of the President, the First Vice-President shall succeed to the office of President for the remainder of the term. In the event of a vacancy in the office of President caused by the death, resignation or disability of the President at a time when there is no First Vice-President the National Executive Committee may appoint a President to fill the vacancy for the remainder of the term.

13.8 In the event of a vacancy in the office of First Vice-President caused by the death, resignation or disability of the First Vice-President, the National Executive Committee may, after consultation with the Nominating Committee, appoint a First Vice-President to fill the vacancy for the remainder of the term. Under the circumstances of succession provided for in By-law 13.7 or in this By-law 13.8, the National Executive Committee may reappoint the President or the First Vice-President or both of them to their respective offices for the next succeeding term.

13.9 The Members of each District shall annually, at least four weeks before the Annual Meeting, elect the Chairman of the District Executive Committee for such District. No person shall be elected Chairman of a District Executive Committee

for more than two terms in succession. In the event of a vacancy in the office of Chairman caused by the death, resignation or disability to act of the Chairman, the members of the District Executive Committee may appoint a Chairman to fill the vacancy for the remainder of the term.

13.10 The Members of each District shall elect the members of the District Executive Committee to succeed the members retiring at the next Annual Meeting and the election shall be held annually on the same day as the election of the Chairman of such Committee. The members of such Committee shall be elected for a two year term, the members who have been in office for two years to retire at each Annual Meeting. The length of time a member has been in office shall be computed from his last election. A retiring member shall be eligible for re-election. In the event of a vacancy on the Committee caused by the death, resignation or disability to act of a member thereof, the Committee may appoint a person to fill the vacancy for the remainder of the term of such member.

13.11 The election of the Chairman and members of a District Executive Committee may be by vote at a meeting of Members of the District, or in such other manner as the District Executive Committee may determine.

13.12 At least one month before the Annual Meeting the District Executive Committee for each District shall advise the Secretary in writing of the names of the Chairman and members of the Committee elected for the ensuing year, and the newly elected Chairman and Committee shall take office on the date of the Annual Meeting next following their election.

13.13 In the event that the Members of any District shall in any year fail to elect a Chairman and/or members of the District Executive Committee, the President may at any time before the Annual Meeting appoint a Chairman and/or members to succeed those whose terms will expire at the ensuing Annual Meeting, and the term of office of any Chairman or members so appointed shall be the same as if he and/or they had been elected by the Members of the District.

13.14 The President and all elected officers of the Association and the members of a District Executive Committee shall hold office until their successors are duly appointed or elected.

BY-LAW No. 14**MEETINGS OF THE ASSOCIATION**

14.1 The Annual Meeting of the Association shall be held at such time and place and on such day or days in June in each year as the National Executive Committee shall determine, and written notice of the Meeting shall be given to all Members by the Secretary at least six weeks before the Meeting.

14.2 Upon fifteen days' previous notice in writing given to all Members, the National Executive Committee may call a Special Meeting of the Association and shall, on requisition in writing by not less than seven Members in good standing, call a Special Meeting of the Association for the purpose or purposes set forth in such requisition. Any Special Meeting shall be held at such time and place as the National Executive Committee may determine.

14.3 All Members, partners of Member firms, directors and officers of Member corporations and employees of Members shall be entitled to be present at Meetings of the Association. Each Member shall be entitled to only one vote at any Meeting, regardless of the number of Branch Office Memberships of the Member. Such vote, in the case of a firm or corporation, shall be cast by the senior partner or director or officer present, or if no partner, director or officer is present, by a proxy.

14.4 Any Member may by writing appoint a proxy to attend and vote at any Meeting on behalf of such Member. No person shall act as a proxy unless he is otherwise entitled to be present at a Meeting as a Member or as a partner, director, officer or employee of a Member. Instruments of proxy shall be lodged with the Secretary not later than 10:00 a.m. of the day of the Meeting, or of any adjournment thereof, and unless so lodged no proxy shall be used or acted upon.

14.5 No Member who is in arrears in respect of his Annual Fee shall be entitled to attend or vote either in person or by proxy at any Meeting of the Association.

14.6 At any Meeting, unless a poll is demanded by the Chairman or by any person present, a declaration by the Chairman as to whether or not a resolution has been carried or carried unanimously or by any particular majority on a show of hands shall be conclusive evidence of the fact. If at any Meeting a poll is so demanded, it shall be taken in such manner as the Chairman may direct, and the result of the poll shall be declared by the Chairman, whose declaration shall be conclusive evidence of the fact.

BY-LAW No. 15**ASSOCIATION ACCOUNTS AND FUNDS**

15.1 The fiscal year of the Association shall terminate on the 31st day of March in each year.

15.2 The Budget and Investment Committee shall prepare and submit to the National Executive Committee on or before the 31st day of March in each fiscal year a budget setting forth the estimated receipts and expenditures of the Association for the ensuing fiscal year together with such financial proposals as the Budget and Investment Committee may deem desirable.

15.3 The Managing Director or other officer designated by the National Executive Committee shall be the custodian of the funds of the Association, and shall cause to be deposited to the credit of the Association in a chartered bank or a trust company approved as indicated in By-law 15.4 all moneys received. Such officer shall keep proper books of account and shall exhibit them at all reasonable times to any member of the National Executive Committee. A proper voucher shall be obtained for every expenditure made on behalf of the Association.

15.4 The Association may transact its banking business with and keep one or more bank accounts at any office or offices of any one or more chartered banks and/or trust companies in Canada (hereinafter called the "Bank") approved by the Budget and Investment Committee.

15.5 Subject to By-law 15.6, all cheques and other orders for the payment of money shall be signed in the name of the Association by any two of the following, namely, the President, any Vice-President and the Honorary Treasurer or by any one of the foregoing and any one of the Managing Director, the Secretary and the Director of Education (but without power to overdraw except as provided in By-law 15.7) and any one of the said persons shall have power on behalf of the Association to negotiate with, deposit with or transfer to the Bank (but for credit of the account of the Association only) all cheques and other orders for the payment of money and for such purpose to endorse the same or any of them on behalf of the Association, and from time to time to arrange, settle, balance and certify all books and accounts between the Association and the Bank, to receive all paid cheques and vouchers and to sign and deliver the Bank's form of settlement of balances and release. Any endorsement in the name of the Association by rubber stamp or otherwise shall be valid and binding.

15.6 The Association may keep a special bank account, to be designated "Special Imprest Bank Account", at any office of any chartered bank in Canada, in which there may be deposited from time to time to the credit of the Association sums not in excess of \$10,000 in the aggregate in each calendar month and on which cheques may be drawn up to a maximum amount of \$250 per cheque. Cheques upon the Special Imprest Bank Account may be signed in the name of the Association either as provided in By-law 15.5 or by the Managing Director and either the Secretary or the Director of Education.

15.7 The National Executive Committee may from time to time (and either by way of overdrawing the Association's bank account or otherwise) borrow money on the credit of the Association up to but not exceeding fifty per centum of the principal amount of the securities for the time being constituting investments of the funds of the Association, and as security for any such borrowing may pledge any or all of such securities. All promissory notes and other instruments necessary or desirable in connection with such borrowings and pledges shall be signed in the name of the Association by any two members of the Budget and Investment Committee who are authorized signing officers under By-law 15.5 or by any one of such members and the Managing Director.

15.8 The Budget and Investment Committee may from time to time authorize the investment of any funds of the Association in securities issued or guaranteed by Canada or any Province in Canada, the sale of any such securities and the reinvestment of all or any part of the proceeds in any such securities. The Budget and

Investment Committee may also authorize the investment of any such funds in securities other than of such classes but only if the maturity date of such securities is not later than the end of the fiscal year in which the investment is made.

15.9 The Managing Director or other officer designated under By-law 15.3 shall manage the investment of the funds of the Association under the direction of the Budget and Investment Committee.

Enacted 23/9/68

BY-LAW NO. 16**DISTRICT ASSOCIATION AUDITORS, MEMBERS' AUDITORS,
FINANCIAL REPORTING AND EXAMINER**

16.1 Any District Executive Committee with the approval of a majority vote of the Members of the District may appoint a firm of accountants as auditors for its District. Such auditors, who shall be known as District Association Auditors, shall have the powers and perform the duties set forth in the By-laws.

16.2 The District Association Auditors for each District shall be paid by the Association such remuneration and expenses as shall be agreed upon by the District Executive Committee. The District Executive Committee shall annually divide the amount of such remuneration and expenses among those Members whose principal offices are located in the District in such manner as the Committee in its discretion may determine, and shall give written notice to each such Member of the amount payable by the Member in accordance with such determination. In the event that any Member fails to pay the amount so payable by it, or any portion thereof, such amount or such portion, as the case may be, shall be paid out of the general funds of the Association and thereafter until repaid shall constitute a debt of such Member to the Association.

16.3 Each District Executive Committee shall select annually a panel of accounting firms (which may include the District Association Auditors). In addition, each District Executive Committee may at any time appoint one or more additional firms of accountants to or remove one or more firms of accountants from such panel. Except as otherwise provided by the By-laws and Regulations, each Member shall select from the panel its own auditor and the fees and expenses in respect of each audit or examination shall be paid by the Member concerned.

16.4 Subject to By-law 16.5, each Member shall file annually with the District Association Auditors for the District in which the Member has its principal office, two copies of the following financial statements as at the end of the Member's fiscal year or as at such other fixed date as may be agreed with the District Association Auditors, which date shall be registered with the District Association Auditors and with the Examiner namely:

- Statement A Statement of assets and liabilities with certificate of
Members and Report of Member's Auditor
- Statement B Statement of net free capital
- Statement C Statement of adjusted liabilities
- Statement D Statement of capital requirement

All such statements shall be prepared on such forms as the National Executive Committee may from time to time prescribe for the purpose, shall be supplemented by such additional schedules as may be appropriate, and shall be filed through the Member's Auditor with the District Association Auditors for such District within five weeks of the date as of which such statements are required to be prepared, subject to such extension of time, if any, as the District Association Auditors may in their discretion grant upon the request in writing of the Member's Auditor.

The District Association Auditors for such District shall,

- (a) if no such extension of time has been granted, forthwith advise the applicable District Audit Committee of the failure of the Member's Auditor to make the filings required by this By-law 16.4 within the time herein prescribed;
- (b) if any such extension of time has been granted, forthwith thereafter submit to the applicable District Audit Committee a report thereon, which shall specify the reasons for granting the extension and the period thereof;
- (c) if any such extension of time has been granted and the filings required by this By-law 16.4 have not been made within the period of such extension, forthwith thereafter advise the applicable District Audit Committee of the failure to make such filings.

16.5 Any Member which

- (i) is also a member of any stock exchange designated under the Regulations for the purpose of this By-law;
- (ii) is subject to the audit requirements of such exchange; and
- (iii) elects to compute its minimum net free capital in accordance with the rules of such stock exchange;

shall file annually with the District Association Auditors in lieu of the financial statements required under By-law 16.4 two copies of the financial statements and related information as and when filed by such Member with such stock exchange or the auditors thereof. If the District Association Auditors so require, such Member shall also establish to the satisfaction of such District Association Auditors that as of the date of the statements filed with such stock exchange or the auditors thereof the Member's capital was sufficient to meet the requirements of such stock exchange. An election under this By-law 16.5 and any revocation of any such election shall be subject to the approval of the District Association Auditors who may give or withhold such approval as in their discretion they think fit.

16.6 In addition to the statements under By-law 16.4 or 16.5, as the case may be, each Member shall file with the District Association Auditors, through the Member's Auditor, particulars of the name and relationship to the Member of each Affiliate of the Member and, if and when the District Association Auditors so request, such financial statements and reports with respect to the affairs of any such Affiliate of the Member as the District Association Auditors consider necessary or advisable.

16.7 Subject to By-law 16.5, every Member's Auditor shall examine the accounts of the Member as at the date referred to in By-law 16.4 and shall make a report thereon to the District Association Auditors in such form as the National Executive Committee may from time to time prescribe. Each Member's Auditor shall also make such additional examinations and reports as the District Association Auditors may from time to time request or as the District Executive Committee may from time to time direct.

16.8 The Member's Auditor shall conduct his examination of the accounts of the Member in accordance with generally accepted auditing standards and the scope of his procedures shall be sufficiently extensive to permit him to express an opinion on the Member's financial statements in the form prescribed. Without limiting the generality of the foregoing, the scope of the examination shall, where applicable, include at least the procedures set out in Part 1C of the Regulations.

16.9 Every Member's Auditor for the purpose of any such examination shall be entitled to free access to all books of account, securities, cash, documents, bank accounts, vouchers, correspondence and records of every description of the Member being examined, and no Member shall withhold, destroy or conceal any information, document or thing reasonably required by the Member's Auditor for the purpose of his examination.

16.10 In addition to filing the annual statements and Auditor's report required under this By-law 16 each Member shall also file in each year with the District Association Auditors for the District in which the Member has its head office or principal Canadian office two interim statements as of dates to be selected by the Examiner. The Examiner shall not inform the Member of the dates he has selected until after the close of business on the respective dates. Such additional financial statements shall be prepared in the same form as the annual statements required hereunder (except that none of such statements need be audited) or in such other form as may be agreed upon with the said District Association Auditors. Two sets of such additional financial statements shall be filed within five weeks of the date as of which such statements are prepared as aforesaid, subject to such extension of time, if any, as the said District Association Auditors may in their discretion grant when requested in writing by the Member or by the Member's Auditor. The provisions relating to filings set forth in the last sentence of By-law 16.4 shall apply to this By-law 16.10 mutatis mutandis provided that the word "Member" shall be substituted for the words "Member's Auditor" where the same appear in subdivision (a) thereof.

16.11 Any Member which

- (i) is also a member of any stock exchange designated under the Regulations for the purposes of this By-law;
- (ii) is subject to the audit requirements of such exchange; and
- (iii) elects to compute its minimum net free capital in accordance with the rules of such stock exchange;

shall file in each year with the District Association Auditors in lieu of the financial statements required under By-law 16.10 two copies of all interim financial statements and related information as and when filed by such Member with such stock exchange or the auditors thereof. If the District Association Auditors so require, such Member shall also establish to the satisfaction of such District Association Auditors that as of the date of the statements filed with such stock exchange or the auditors thereof the Member's capital was sufficient to meet the requirements of such stock exchange. An election under this By-law 16.11 and any revocation of any such election shall be subject to the approval of the District Association Auditors who may give or withhold such approval as in their discretion they think fit.

16.12 If any Member's Auditor fails to make the examination or reports required under the By-laws and Regulations, or if, upon examination of any Member's financial statements or Member's Auditor's report, the District Association Auditors are of opinion that the financial condition or conduct of the business of any Member is unsatisfactory or that any Member is not complying with the By-laws and Regulations, the District Association Auditors shall report accordingly to the applicable District Audit Committee with such recommendations as they consider advisable. The District Association Auditors may in their discretion refer to such Member by number only unless or until requested by the District Audit Committee to disclose the name of the Member.

Amended
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ment in
writing,
November
1968

16.13 If within such limited period as the District Audit Committee may permit, the situation reported upon by the District Association Auditors has not been rectified to the satisfaction of the District Association Auditors and the District Audit Committee, or if the situation has been so rectified but the District Audit Committee is of opinion that in the interests of the Association the Member concerned should be disciplined, the District Audit Committee shall

- (i) have power to impose, and shall impose, a fine of not less than \$250 or more than \$2000 or a reprimand, or both, if in the opinion of the Committee the offence of the Member is minor in nature and the Member admits the offence, waives a hearing, furnishes a statement pledging future compliance and accepts the penalty imposed; or
- (ii) refer the matter to the applicable Business Conduct Committee for disciplinary action, making such recommendations as the District Audit Committee may think advisable, and at the same time shall advise the Member concerned that it has been reported adversely to the Business Conduct Committee.

16.14 If at any time any District Association Auditors are of the opinion that the By-laws and/or Regulations are not being properly enforced in any specific case by reason of failure of any Committee to act upon any report or recommendation made thereunder by such District Association Auditors in such manner and with such promptness as the District Association Auditors consider necessary in the circumstances, the District Association Auditor shall advise the President and Secretary of the particulars of such lack of enforcement.

Amended
by instru-
ment in
writing,
November
1968

16.15 Upon receipt of any such advice from the District Association Auditors the President shall convene a meeting of the National Executive Committee to which he may summon the District Audit Committee and the applicable Business Conduct Committee and any Member who has been reported upon adversely by the District Association Auditors. If the National Executive Committee is not satisfied by the explanations given by the District Audit Committee and/or the Business Conduct Committee it may reprimand them or either of them and, if any Member's Auditor has failed to make any examination or report required by the By-laws, may direct the District Executive Committee to strike such Member's Auditor from the panel of Member's Auditors of the District.

16.16 The National Executive Committee may appoint a person as Examiner for the Association. The Examiner shall have such powers and perform such duties as the By-laws and Regulations may prescribe and as the National Executive Committee may otherwise from time to time assign to him.

16.17 Subject only to the general direction of the National Executive Committee and of the Managing Director, the Examiner may make such examinations of and investigations into the affairs of any Member as he considers necessary or desirable to determine whether or not the financial condition and conduct of the business of such Member is satisfactory and such Member is complying with the By-laws and Regulations.

Amended
by instru-
ment in
writing,
November
1968

16.18 The Examiner shall also undertake such special examinations of and investigations into the affairs of any Member as any Audit Committee or Business Conduct Committee may request.

16.19 For the purpose of any examination or investigation pursuant to By-law 16.17 or By-law 16.18, the Examiner shall be entitled to free access to all books of account, securities, cash, documents, bank accounts, vouchers, correspondence and records of every description of the Member concerned, and no Member shall withhold, destroy or conceal any information, documents or thing reasonably required by the Examiner for the purpose of his examination or investigation.

16.20 If upon any examination or investigation pursuant to By-law 16.17 the Examiner is of opinion that the financial condition or conduct of the business of any Member is unsatisfactory or that any Member is not complying with the By-laws or Regulations, he shall report accordingly to the applicable District Audit Committee and to the applicable District Association Auditors with such recommendations as he considers advisable, and thereupon the provisions of By-law 16.13 shall apply with the substitution of the Examiner for the District Association Auditors to the same extent and in all respects as though such report had been made to the District Audit Committee by the District Association Auditors. The Examiner may in his discretion refer to such Member by the number only unless or until requested by the District Audit Committee to disclose the name of the Member.

BY-LAW No. 17**MINIMUM CAPITAL, CONDUCT OF BUSINESS,
AND INSURANCE**

Amended 23/9/68 17.1 Every Member shall have and maintain at all times such minimum net free capital in such amount and in accordance with such requirements as the National Executive Committee may from time to time by Regulation prescribe.

17.2 Every Member shall keep and maintain at all times a proper system of books and records.

Amended by instrument in writing October 1968 17.3 All securities of a customer fully paid for and which have come into the possession of the Member and are not subject to any lien or charge in favour of the Member shall be segregated and distinguished as held in trust for the customer owning the same. None of such securities shall be borrowed by any Member unless (i) the Member has received the prior approval in writing of the customer owning such securities and (ii) either an amount of cash equal to the market value of the securities borrowed has been deposited in a chartered bank in trust for the customer or certificates representing securities having at least the same market value as the securities borrowed have been segregated and distinguished as held in trust for the customer owning the same (or lodged in escrow with a chartered bank on behalf of such customer).

Amended by instrument in writing, November, 1968. 17.4 Every Member shall fulfil its contracts and any Member which in the ordinary course of business finds that any other Member refuses or is unable to fulfil its contracts shall immediately report such fact to the Chairman of the applicable Business Conduct Committee.

17.5 Every Member shall effect and keep in force insurance against such losses, and in such minimum amount or amounts in respect of such losses or any of them, as the National Executive Committee may from time to time by Regulation prescribe.

17.6 Every Member's Auditor shall, during the preparation or upon the completion of every examination under the provisions of By-law 16.7, forward to the District Association Auditors of the District in which the Member has its principal office a report by the Member, confirmed by the Member's Auditor, indicating whether or not the Member is complying with the provisions of By-law 17.5 and, if not, stating

- (i) the losses insured against, and
- (ii) where minimum amounts of insurance against such losses are prescribed by the National Executive Committee, the amount of insurance carried by the Member in respect of such losses.

17.7 If any such report indicates that a Member is not complying with the provisions of By-law 17.5, the District Association Auditors shall report thereon to the applicable District Audit Committee.

Enacted 23/9/68 17.8 No Member shall publish or circulate any financial statement unless such statement is accompanied by a report of the Member's Auditor upon such statement.

BY-LAW No. 18**REGISTERED REPRESENTATIVES**

18.1 No Member shall employ any person as a registered representative in any Province in Canada unless:

- (i) such person is registered or licensed to sell securities under the statute relating to the sale of securities in the Province in which the person proposes to act as registered representative.
- (ii) registration as or interim approval of a registered representative for such Member has been granted by the applicable District Executive Committee or by the National Executive Committee.

18.2 The applicable District Executive Committee shall notify the Secretary of the acceptance, interim approval pursuant to Regulation 305 or refusal by it of any application for registration or any rejection of application pursuant to Regulation 305, and the Secretary shall, upon receipt of such notice, notify the Member and the Securities Commission of the Province in which the applicant proposes to act as a registered representative.

18.3 Application for registration or transfer of a registered representative shall be made to the applicable District Executive Committee in such form as the National Executive Committee may from time to time prescribe and the applicant for registration as a registered representative may be required to take and pass such examinations and pay such fees as the National Executive Committee may from time to time direct.

18.4 The form of application for registration or transfer of registration shall contain an agreement by the proposed registered representative that he is conversant with the By-laws and Regulations of the Association and submits to the jurisdiction of the Association, and that if registration is granted, he will abide by such By-laws and Regulations as the same are from time to time amended or supplemented, and that if such registration is subsequently revoked or terminated, he will forthwith terminate his employment with the Member with whom he is employed at the time of such revocation or termination and thereafter will not accept employment with or perform services of any kind for any Member or any Affiliate of a Member, in each case if and to the extent so provided in the By-laws and Regulations.

18.5 The applicable District Executive Committee may in its discretion revoke or terminate the registration of any registered representative if in the opinion of the Committee, the registered representative has been guilty of any business conduct or practice unbecoming an employee of a Member or detrimental to the interests of the Association, or of failure to comply with the provisions of any By-law or Regulation or of failure to comply with or carry out the provisions of any federal or provincial statute relating to the sale of securities or of any regulation made pursuant thereto, or is otherwise not qualified whether by character, business repute, training, experience or otherwise, to perform the functions and duties of a registered representative.

18.6 If the applicable District Executive Committee proposes to refuse registration of an applicant for registration as a registered representative or the transfer of registration of a registered representative, or proposes to revoke or terminate the registration of any registered representative it shall have the power to summon and shall summon the Member concerned before a meeting of such Committee, of which at least forty-eight hours' notice shall be given to the Member, specifying in general terms the basis of such refusal or the nature of the complaint against the registered representative, as the case may be. Both the Member and the applicant for registration or registered representative, as the case may be, shall be entitled to appear and be heard at the meeting.

18.7 The applicable District Executive Committee shall have power in its discretion upon the affirmative vote of a majority of such members of such Committee as are present in person at the meeting, to refuse the application for registration or a transfer of registration or to revoke or terminate the registration of the registered representative, as the case may be.

**Amended
by instru-
ment in
writing,
November,
1968**

18.8 The Secretary, upon advice by the applicable District Executive Committee, shall forthwith give notice to the Member of such refusal, revocation or termination and the Member shall have the right within five days after such notice has been given to make application in writing to the Chairman of the Business Conduct Committee having jurisdiction in the District in which the registered representative is acting as such or in which the applicant for registration proposes to act as a registered representative (with a copy of such application to the Secretary), for a review of the decision of the appropriate District Executive Committee. Upon receipt of such application a special meeting of such Business Conduct Committee shall be called for such purpose and at least forty-eight hours' notice shall be given to the Member of such special meeting at which both the Member and the applicant for registration or registered representative, as the case may be, shall be entitled to attend and be heard.

**Amended
by instru-
ment in
writing,
November,
1968**

18.9 At any meeting called pursuant to By-law 18.8 the Business Conduct Committee shall have power either to confirm the action of the applicable District Executive Committee or to require the applicable District Executive Committee to register the applicant for registration or rescind its refusal of transfer of registration or revocation or termination of registration, as the case may be.

18.10 The action of the applicable District Executive Committee in refusing the transfer of registration or in refusing, revoking or terminating registration shall not become effective until the time for giving notice of review thereof has expired, or if proceedings for review have been instituted, until a decision has been rendered by the Business Conduct Committee which made such review.

18.11 If and whenever the registration of any person as a registered representative for any Member is revoked or terminated, the Secretary shall notify the Member of such revocation or termination and thereupon the Member shall terminate the employment of such person. The Secretary shall also give notice of such revocation or termination to all recognized stock exchanges and all securities commissions.

18.12 Every Member shall notify the Secretary in writing within seven days of the termination of the employment of any person as a registered representative by such Member, whether the employment is terminated pursuant to the provisions of this By-law or otherwise.

BY-LAW No. 19**COMPLAINTS, INVESTIGATIONS AND DISCIPLINE**

19.1 Each Member shall be responsible for all acts and omissions of all officers and employees of the Member, including officers and employees of any branch office or branch offices of the Member.

Amended
by instru-
ment in
writing,
November,
1968

19.2 Subject to By-law 19.3 any complaint against a Member shall be in writing and shall be signed and shall be referred to the Chairman of the applicable Business Conduct Committee, provided that complaints against a Member at a branch office shall be referred to the Chairman of the Business Conduct Committee having jurisdiction in the District in which such branch office is situated. The Business Conduct Committee receiving any such complaint shall make such investigation and take such action as it may deem advisable.

Amended
by instru-
ment in
writing,
November,
1968

19.3 Each Business Conduct Committee shall also have the right, and when requested by the District Executive Committee or the District Audit Committee for a District within the jurisdiction of such Business Conduct Committee shall be obliged, whether or not any complaint has been submitted pursuant to By-law 19.2 to make an investigation of the affairs of any Member having its principal office or any branch office in a District within the jurisdiction of such Business Conduct Committee provided that the Business Conduct Committee shall not be obliged to act upon any such request unless the Member in respect of whom the request has been made has its principal office or a branch office in the District of the Committee making the request; and any such investigation shall include a review of the character of the business, the financial position and the business and financial practices and associations of such Member and/or any such branch office.

19.4 For the purpose of any investigation pursuant to By-law 19.2 or 19.3 a Business Conduct Committee shall have the right:

- (i) to require the Member to submit a report in writing with regard to any matter involved in any such investigation;
- (ii) to require the Member to produce for inspection by the District Association Auditors and/or the Examiner the books, records and accounts of the Member and of any of its branch offices with relation to any such matter; and
- (iii) to require the Member or any partner, director, officer or employee of the Member to attend before such Committee to answer questions and give information respecting any such matter;

and the Member shall be obliged to submit such report, to permit such inspection and to cause such persons to attend before such Committee accordingly.

Amended
by instru-
ment in
writing,
November,
1968

19.5 If, as a result of any such investigation, or without such investigation, a Business Conduct Committee is of opinion that:

- (a) any Member having its principal office or any branch office in a District within the jurisdiction of such Business Conduct Committee may have been guilty of any one or more of the following offences, namely:
 - (i) failure to carry out an agreement with the Association;
 - (ii) failure to meet liabilities to another Member or to the public;
 - (iii) any business conduct or practice which such Business Conduct Committee in its discretion considers unbecoming a Member or detrimental to the interests of the Association;
 - (iv) failure to comply with or carry out the provisions of any of the By-laws or Regulations; or
 - (v) failure to comply with or carry out the provisions of any applicable federal or provincial statute relating to trading in securities or of any regulation made pursuant thereto; or
- (b) the business or financial arrangements, associations and/or affiliations, direct or indirect, of such Member or any branch office of such Member, are objectionable;

such Business Conduct Committee shall have power, in its discretion, upon notice to the Member as provided in By-law 19.6, to summon the Member before a meeting of such Business Conduct Committee to answer the complaints or charges referred to in the notice.

Amended
23/9/68
and
Amended
by instru-
ment in
writing,
November,
1968

19.6 Notice in writing of such meeting shall be given by the Business Conduct Committee to the Member concerned at its principal office at least twenty-four hours prior to the date of the meeting. Such notice shall specify in reasonable detail the nature of the complaints or charges against the Member. The Member, if a firm, shall be represented by a partner or if a corporation by a director who is a Principal Contributor of Capital and the Member or individual representing the Member shall be entitled to be accompanied by Counsel at the meeting and to call, examine and cross-examine witnesses.

Amended
23/9/68
and
Amended
by instru-
ment in
writing,
November,
1968

19.7 If the Member fails to appear at such meeting when summoned or is adjudged by the Business Conduct Committee to have been guilty of any of the offences referred to in By-law 19.5 (a) or fails to satisfy the objections of the Committee to the arrangements, associations and/or affiliations referred to in By-law 19.5 (b), the Committee shall have power, in its discretion, to impose upon the Member any one or more of the following penalties, namely:

- (i) a reprimand;
- (ii) a fine not exceeding \$5,000;
- (iii) suspension of the rights and privileges of the Member for such specified period and upon such terms as such Committee may determine; and
- (iv) expulsion of the Member from the Association.

Amended
23/9/68

19.8 The suspension of the rights and privileges of a Member imposed under clause (iii) of By-law 19.7 shall, unless the Committee imposing the same otherwise directs, continue until such Member appears or reappears, as the case may be, before such Committee at such time or times as such Committee may direct and produces evidence satisfactory to such Committee that such Member is not then guilty of any of the offences referred to in By-law 19.5 (a) and/or is not a participant in any objectionable business or financial arrangement, association and/or affiliation referred to in By-law 19.5 (b), as the case may be. Upon such Member so appearing or reappearing, as the case may be, or failing so to appear or reappear, as the case may be, such Committee shall either (i) confirm that such suspension shall terminate as originally prescribed by it or as prescribed by the National Business Conduct Committee pursuant to By-law 19.14, or (ii) continue such suspension for a further period or periods, but may in its discretion provide that no further reappearances by such Member before such Committee will be required during the period of suspension so continued, or (iii) expel such Member from the Association. Any determination of such Committee pursuant to the foregoing clause (ii) shall, for the purposes of these By-laws, be deemed to be the imposition of a new suspension.

Amended
23/9/68
and
Amended
by instru-
ment in
writing,
November,
1968

19.9 Any decision of a Business Conduct Committee imposing a penalty shall be in writing and notice thereof shall be given promptly to the Member, and to the President, the Secretary, the applicable District Executive Committee and the National Business Conduct Committee. A copy of the decision or a summary thereof shall accompany or form part of the notice.

19.10 The Member shall have the right, within ten days after notice has been given to it pursuant to By-law 19.9, to appeal to the National Business Conduct Committee from the decision of the Business Conduct Committee and from any penalty imposed by it by giving written notice of such appeal to the Secretary. Such notice shall set out briefly the grounds relied upon for such appeal.

Amended
23/9/68
and
Amended
by instru-
ment in
writing,
November,
1968

19.11 The National Business Conduct Committee shall also, within the ten day period mentioned in By-law 19.10, have the right upon its own motion, and shall be obliged upon the written request of the President, to institute proceedings for a review by the National Business Conduct Committee of the decision of the Business Conduct Committee by giving notice of its intention to review such decision to the Member, and to the President, the Secretary, the applicable District Executive Committee and the Business Conduct Committee.

19.12 If the Member gives such notice of appeal from a decision of the Business Conduct Committee or if the National Business Conduct Committee gives such notice of its intention to review the decision, a special meeting of the National Business Conduct Committee shall be held for the purpose of such appeal or review

Ten days' notice of such meeting shall be given by the Secretary to the Member, and to the President, the applicable District Executive Committee, the Business Conduct Committee and the National Business Conduct Committee.

Amended
23/9/68
and
Amended
by instru-
ment in
writing,
November,
1968

19.13 At any such meeting of the National Business Conduct Committee the Member concerned, if represented by a partner in the case of a firm, or if represented by a director who is a Principal Contributor of Capital in the case of a corporation, and any member of the Business Conduct Committee whose decision is being appealed and their respective counsel shall be entitled to attend and be heard. The National Business Conduct Committee shall consider the record, if any, of the proceedings before such Business Conduct Committee and may also hear such further evidence as it may deem relevant.

Amended
by instru-
ment in
writing,
November
1968

19.14 The National Business Conduct Committee, upon such appeal or review, may revoke, increase, decrease, modify or confirm any penalty imposed by the Business Conduct Committee or may itself impose any one or more of the penalties referred to in By-law 19.7. If the National Business Conduct Committee itself suspends the rights and privileges of a Member, such suspension, shall, unless the National Business Conduct Committee otherwise directs, continue until such Member appears or reappears, as the case may be, before the Business Conduct Committee before which the Member was summoned to appear, at such time or times as the National Business Conduct Committee may direct and produces evidence of the type required by By-law 19.8. Upon such Member so appearing or reappearing, as the case may be, such Business Conduct Committee shall take the action prescribed by By-law 19.8.

Amended
by instru-
ment in
writing,
November
1968

19.15 Any Member who is disciplined pursuant to this By-law shall pay the whole or such part of the costs of any investigation and proceedings as the Business Conduct Committee, or if the decision of the Business Conduct Committee is appealed to or reviewed by the National Business Conduct Committee, as the National Business Conduct Committee, may deem fair and appropriate in the circumstances. If any investigation is based upon a complaint by a Member and the complaint is found to have been unwarranted the costs of the whole or some part of the investigation and proceedings may be assessed against the complaining member.

Amended
by instru-
ment in
writing
November
1968

19.16 Where a Business Conduct Committee, which has power to summon a Member before a meeting of such Committee to answer any complaint or charge, is of the opinion that any offence of a Member is minor in nature, nothing in this By-law contained shall prevent the Member, with the consent of such Committee, from admitting the offence, waiving a hearing, furnishing a statement pledging future compliance and accepting a specific penalty not exceeding in severity a reprimand or a fine not exceeding \$500 or both.

Amended
by instru-
ment in
writing
November
1968

19.17 Any reprimand made by a Business Conduct Committee or by the National Business Conduct Committee may be made in such manner as the Committee imposing the reprimand may in its discretion determine.

19.18 Nothing in this By-law contained shall affect the disciplinary jurisdiction of the District Audit Committee provided for in By-law 16.

Amended
23/9/68

19.19 Notwithstanding anything in this By-law contained, in the event that:

- (a) the registration of a Member as a dealer in securities under any statute respecting the sale of securities of any Province in which the Member is carrying on business is suspended or cancelled, or a Member fails to renew any such registration which has lapsed, or
- (b) a Member makes a general assignment for the benefit of its creditors or is declared bankrupt or makes an authorized assignment or a proposal to its creditors under the Bankruptcy Act, or a winding-up order is made in respect of a Member, or a receiver or other officer with similar powers is appointed in respect of all or any part of the undertaking and property of a Member, or
- (c) a recognized stock exchange suspends the membership or privileges thereof of a Member who is a member of such exchange,

then the Business Conduct Committee having jurisdiction in the District which comprises or includes the Province concerned, in any of the events referred to in (a) above, or in the District in which a Member has its principal office, in any of the events referred to in (b) or (c) above, shall have power and (except with respect to an event referred to in (c) above) shall be obliged, forthwith upon receiving notice of such event, to suspend the rights and privileges of the Member for such period and on such terms and conditions as such Committee may in its discretion determine as necessary to enable it to investigate the circumstances of the event. For the purpose of such investigation the Committee shall have all the rights provided for in By-law 19.4

Amended by instrument in writing, November 1968 19.20 In any of the events referred to in By-law 19.19 (a), if the Member fails to take appropriate proceedings within the time limited by the statute for a review of or by way of appeal from such suspension or cancellation of registration or fails within such period as such Business Conduct Committee may prescribe to renew any such registration which has lapsed, or if, notwithstanding such review and appeal, such suspension or cancellation of registration is confirmed and becomes final, the Committee may, either with or without notice to the Member, suspend the Member for a further period or expel the Member from the Association, and such suspension or expulsion shall take immediate effect and there shall be no appeal therefrom. If upon review or appeal the registration of a Member under the statute is reinstated, the Committee may reinstate the Member and cancel any suspension imposed by it upon the Member.

Amended by instrument in writing, November 1968 19.21 In any of the events referred to in By-law 19.19 (b), if the Member fails within such period as the Business Conduct Committee may prescribe to satisfy the claims of its creditors and/or obtain a discharge under the Bankruptcy Act or cause the winding-up order or receivership to be discharged or terminated, the Committee may, either with or without notice to the Member, suspend the Member for a further period or expel the Member from the Association, and such suspension or expulsion shall take immediate effect and there shall be no appeal therefrom. If the Member satisfies its creditors and/or obtains a discharge under the Bankruptcy Act or causes the winding-up order or receivership to be discharged or terminated within such period as the Committee may determine, the Committee may reinstate the Member upon such terms and conditions as the Committee may determine and cancel any suspension imposed by it upon the Member.

19.22 Nothing contained in By-law 19.19, 19.20 or 19.21 shall prevent any other proceedings being taken against the Member pursuant to any other provisions of this By-law.

BY-LAW No. 20

PUBLICATION OF NOTICE OF PENALTIES

- Amended by instrument in writing November 1968
- 20.1 If and whenever,
- (a) a Member is fined or reprimanded or both by a District Audit Committee pursuant to By-law 16.13, notice of the penalty (which notice shall not include the name of the Member) forthwith after the imposition thereof shall be given to all Members;
 - (b) a Member is fined or reprimanded or both by a Business Conduct Committee pursuant to By-law 19.16, notice of the penalty (which notice shall include the name of the Member upon which the penalty is imposed unless such Committee otherwise directs) forthwith after the imposition thereof shall be given to all Members;
 - (c) a Member is fined or reprimanded or both by a Business Conduct Committee in any case to which By-law 19.16 is inapplicable, notice of the penalty (which notice shall include the name of the Member upon which the penalty is imposed unless such Committee otherwise directs) shall be given to all Members, and to such securities commissions, recognized stock exchanges and other persons, organizations or corporations, if any, as the Committee imposing the penalty may direct, forthwith after the expiration of the period limited for an appeal from or review of the decision of the Committee imposing the penalty, provided that if proceedings for such an appeal or review have been instituted within such period, notice of the penalty, if any, shall be deferred until the conclusion of, or abandonment of the proceedings for, such appeal or review;
 - (d) upon an appeal to or review by the National Business Conduct Committee from or of a decision of a Business Conduct Committee imposing a fine or reprimand or both, the penalty imposed by the Business Conduct Committee is increased, decreased, modified or confirmed or the National Business Conduct Committee itself imposes a fine or reprimand or both, notice thereof shall be given forthwith to all Members, and to such securities commissions, recognized stock exchanges and other persons, organizations or corporations, if any, as the National Business Conduct Committee may direct;
 - (e) the rights and privileges of a Member are suspended or a Member is expelled from the Association, notice of the penalty and notice of the disposition of any appeal from the imposition thereof shall be given forthwith to all Members, the securities commissions in all Provinces of Canada, recognized stock exchanges, the Bank of Canada and to such other persons, organizations or corporations, if any, as the Business Conduct Committee imposing the penalty or the National Business Conduct Committee upon appeal from or review of the decision of a Business Conduct Committee, as the case may be, may direct. In the event that the penalty is imposed by a decision of a Business Conduct Committee, which is subject to appeal to or review by the National Business Conduct Committee, the notice shall so indicate.

20.2 A notice of a penalty given pursuant to By-law 20.1 shall indicate the general nature of the offence, shall specify the penalty and, except as otherwise provided in clauses (a), (b) and (c) of By-law 20.1, shall include the name of the Member upon which the penalty is imposed.

20.3 A notice of a penalty given pursuant to By-law 20.1 shall be given by publication in the Association Bulletin and in such other manner as the Committee imposing the penalty, or as the National Business Conduct Committee from time to time, may direct, provided however that notice of a penalty given pursuant to clauses (a) and (b) of By-law 20.1 shall be given only by publication in the Association Bulletin.

20.4 A copy of the Association Bulletin containing any notice of the continuance of the suspension of the rights and privileges of any Member or of the expulsion of any Member from the Association shall, forthwith after the expiration of the period limited for an appeal from or review of the decision of the Committee imposing such penalty or in the event of such an appeal or review, forthwith after the conclusion of, or abandonment of the proceedings for such appeal or review, be delivered to each wire service, newspaper and other journal included in the press list of the Association.

BY-LAW No. 21**NO ACTIONS AGAINST THE ASSOCIATION**

Amended
by instru-
ment in
writing
November
1968

21.1 No Member and no partner, director or officer of a Member (including in all cases a Member whose rights and privileges have been suspended and a Member who has been expelled from the Association or whose Membership has been forfeited) and no person who, upon application for registration as a registered representative pursuant to By-law No. 18, submitted to the jurisdiction of the Association, shall be entitled to commence or carry on any action or other proceedings against the Association or against the National Executive Committee, the President's Committee, the National Business Conduct Committee, any District Executive Committee, any Business Conduct Committee, any District Audit Committee, or any other National, District or other Committee of the Association, or against any member of the staff or officer of the Association or member or officer of any such Committee or against any Member's Auditor or against any District Association Auditors, in respect of any penalty imposed or any act or omission done or omitted under the provisions of and in compliance with or intended compliance with the provisions of any By-law or Regulation.

BY-LAW No. 22**USE OF NAME; LIABILITIES; CLAIMS**

22.1 No Member shall use the name of the Association on letterheads or in any circulars or other advertising or publicity matter, except in such form as may be authorized by the National Executive Committee.

22.2 No liability shall be incurred in the name of the Association by any Member, officer or committee without the authority of the National Executive Committee.

22.3 Whenever the Membership of a Member ceases for any reason whatsoever, neither the former Member nor its heirs, executors, administrators, successors, assigns or other legal representatives, shall have any interest in or claim on or against the funds and property of the Association.

BY-LAW No. 23**NOTICES**

23.1 Any notice which is required or permitted by or pursuant to the By-laws may be in writing, mailed in an envelope, postage prepaid, or by telegram, charges prepaid, addressed to the person, firm or corporation to whom or which such notice is directed at his, their or its last known address. Any notice so given shall take effect on the day on which it is placed in the postal letterbox or lodged with the telegraph company, as the case may be.

BY-LAW No. 24**REGULATIONS**

24.1 The National Executive Committee may make and from time to time amend or repeal such Regulations, not inconsistent with the Constitution or By-laws, as in its discretion may be advisable for carrying out the provisions of the By-laws or generally for the purposes of the Association, and all such Regulations for the time being in force shall be binding upon all Members.

24.2 Regulations so made shall be effective and remain in force until the Annual Meeting next following the date of the making of such Regulations, and if approved by such Annual Meeting shall continue in force thereafter unless and until amended or repealed.

24.3 In case of any conflict or inconsistency between the provisions of any Regulations made by the National Executive Committee and any Regulations heretofore or hereafter made by any District Executive Committee, the Regulations of the National Executive Committee shall prevail.

BY-LAW No. 25**MINIMUM STANDARDS OF DISCLOSURE FOR
SALES FINANCE COMPANIES**

25.1 For the purpose of By-law 25.2 and 25.4, "Money Market securities" are defined as debt securities having an original term to maturity of three years or less.

25.2 Except as provided in By-law 25.4, a Member may only transact business, either as principal or agent, in the Money Market securities of those sales finance companies which, in addition to providing audited financial statements on an annual basis, have disclosed to the Member the following documents, to the extent that they are applicable:

- (a) The following Robert Morris Associates Questionnaires prepared on a semi-annual basis:
 - (i) Commercial Financing Questionnaire
 - (ii) Direct Cash Lending Questionnaire
 - (iii) Sales Finance Company Questionnaire; and
- (b) The Canadian Sales Finance Long Form Report developed by the Federated Council of Sales Finance Companies and the Investment Dealers' Association of Canada dated March 23, 1967 or the most recent revision thereof, prepared on an annual basis.

25.3 The Questionnaires and Report referred to in By-law 25.2 must relate to periods ending, in the case of the Questionnaires, not more than 10 months and, in the case of the Report, not more than 16 months prior to the date of investment in the Money Market securities of the relevant sales finance company, provided that no such Questionnaire or Report shall be required to be disclosed pursuant to this By-law No. 25 until four months after the end of the 1967 fiscal year of the sales finance company required to complete and prepare such Questionnaire and Report.

25.4 A Member may transact business in the Money Market securities of a

- (a) sales finance company which finances, in the main, the products of its parent company, or
- (b) sales finance company that is a wholly-owned subsidiary of a company that has guaranteed payment of such Money Market securities of such sales finance company

without requiring compliance with By-law 25.2 provided that the Member shall have obtained from the parent of any such sales finance company information which the Member considers adequate.

Enacted
24/9/68

BY-LAW NO. 26

26.1 There shall be a Financial Administrators Section of the Association, membership in which shall be restricted to Secretaries, Treasurers, Comptrollers or other persons having similar responsibilities regardless of title who are employed by Members.

The Section shall undertake studies on matters relating to financial administration referred by the National Executive Committee or any District Executive Committee or by any member of the Section and shall subsequently submit reports or recommendations to the National Executive Committee or to the appropriate District Executive Committee.

The Section shall be governed by an Executive Committee comprised of members of the Section and this Executive Committee shall be responsible to the National Executive Committee.

A representative of the Executive Committee may attend meetings of the Quebec and Ontario District Executive Committees upon the invitation of the Chairman of the applicable District Executive Committee.

The Executive Committee may make such rules relating to the organization of the Section as are deemed necessary and as are approved by the National Executive Committee.

26.2 There shall be a Young Mens' Section of the Association, branches of which may be established in any city in Canada subject to the approval of the applicable District Executive Committee. Each branch shall have a separate constitution, which shall be approved by the applicable District Executive Committee. One purpose of each branch shall be to assist the applicable District Executive Committee as circumstances dictate.

A representative of a branch approved by the applicable District Executive Committee and who shall have at least four years' experience in the investment business may attend meetings of the applicable District Executive Committee upon the invitation of the Chairman of such District Executive Committee.

A branch of the Young Mens' Section may make such rules relating to the organization of the branch as are deemed necessary and as are approved by the applicable District Executive Committee.

Enacted
by instru-
ment
in
writing
October
1968

BY-LAW NO. 27

MEMBERS' RIGHTS RESPECTING CLIENTS' INDEBTEDNESS

Whenever a client is indebted to a Member all securities held by such Member for or on account of such client shall (subject to the provisions of Regulation 1100 and to the provisions of any agreement between the Member and the client) be, to an amount reasonably sufficient to secure said indebtedness, collateral security for the payment of such indebtedness as may exist from time to time and such Member shall have the right from time to time, in its discretion, to raise money on such securities and to carry such securities in its general loans, and to pledge and repledge such securities in such manner and to such reasonable amount and for such purpose as it may deem advisable and if such Member shall deem it necessary for its protection it shall have the right, in its discretion, to buy any or all securities of which such client's account may be short or sell any or all securities held for or on account of such client and, without in any way restricting the foregoing, shall have the right to recover from such client the amount of the indebtedness or any part thereof remaining unpaid, either with or without realization of the whole or any part of the securities.

REGULATIONS
of
The National Executive Committee

November, 1968

401/68

Passed
23/9/68

PART IA

CAPITAL REQUIREMENTS AND MARGINS

100. In this Part, the expression:

- (a) "active assets" means money and the value of assets readily convertible into money (taken at their market value);
- (b) "adjusted liabilities" means total liabilities plus any unrecorded purchase commitments and any other unrecorded liabilities; minus the sum of:
 - (i) a cash on hand and in banks, including money on deposit in a clients' trust account;
 - (ii) cash surrender value of life insurance;
 - (iii) the market value of securities which the Member owns or has contracted to purchase and which have a margin rate of 5% or less;
 - (iv) (a) debit balances with defined financial institutions;
 - (b) the market value of securities in inventory having a margin rate greater than 5% and used to reduce sales commitments to "defined financial institutions" on line 8 of Supplementary Schedule 7;
 - (v) balances receivable (active debits) from approved affiliates;
 - (vi) the market value of exempted securities included in joint, clients, partners, shareholders, brokers, or dealers accounts not exceeding the debit balance thereof;
- (c) "approved affiliate" means a firm or corporation that is an affiliate of the Member and is a member of or subject to the audit and capital requirements of the Toronto, Montreal/Canadian and Vancouver Stock Exchanges or the Investment Dealers' Association of Canada;
- (d) "clients' trust account" means a special trust account maintained by a Member with a chartered bank or a trust company and designated "clients' trust account";
- (e) "exempted securities" means:
 - (i) treasury bills, bonds and debentures issued or guaranteed by the Government of Canada, or a Canadian province and U.S. Government treasury bills and bonds;
 - (ii) Canadian-Bankers acceptances, bank deposit certificates, bank promissory notes and trust company guaranteed investment receipts — all due within 1 year;
- (f) "financial institutions" means:
 - (i) Government of Canada, provincial governments and all crown corporations, instrumentalities and agencies of the federal and provincial governments;
 - (ii) Bank of Canada, Canadian chartered banks, Quebec savings banks, and the pension funds of such banks;
 - (iii) Trust and insurance companies licensed to do business in Canada with a minimum paid up capital and surplus of \$5,000,000 and pension funds of such trust and insurance companies;
 - (iv) Central credit unions and regional caisses populaire with a minimum paid up capital and surplus of \$5,000,000;
 - (v) Provincial capital cities and all other Canadian cities and municipalities with populations of 50,000 persons and over and funds under the administration of such cities and municipalities;
 - (vi) Mutual funds with total net assets of \$5,000,000 or more;
 - (vii) Corporations, and the trustee pension plans of such corporations, having a minimum net worth of \$25,000,000 on the last audited balance sheet, such balance sheet to be available for inspection.

- (g) "free credit balances" includes such moneys as are received or held by the Member for the account of clients of the Member:
 - (i) for investment, pending such investment;
 - (ii) in payment for securities purchased by clients from the Member where the Member does not own such securities at the time of such purchase, pending the purchase thereof by the Member;
 - (iii) in payment for part of a new issue of securities which has been confirmed to clients on an "if, as and when issued" basis pending the issue and delivery thereof to the Member; and
 - (iv) as proceeds of securities purchased from clients or sold by the Member for the account of clients, pending payment of such proceeds to the clients;
- (h) "liquid capital" means the amount by which active assets exceed the sum of:
 - (i) total liabilities;
 - (ii) net loss (if any) on offsetting future purchase and sales commitments; with the provision that the resulting amount of liquid capital may be increased by adding:
 - (i) the loan value (market value less margin) of any subordinated loans of securities that are not included in the accounts; and
 - (ii) non-current liabilities secured by mortgages on real estate owned by the Member;
- (i) "net free capital" means liquid capital after deducting margin (at rates not less than prescribed rates) on securities owned by the Member and securities sold short by the Member (including future commitments) and also after deducting an amount sufficient to provide for any margin deficiencies on:
 - (i) joint accounts after excluding interests of:
 - (a) members of the I.D.A., or the Toronto, Montreal, Canadian, Vancouver, New York, American, Midwest, Philadelphia-Baltimore, and London stock exchanges, or the Paris Bourse, or the Acceptance Houses Committee, London
 - (b) approved affiliates
 - (c) financial institutions as defined
 - (ii) partners and shareholders accounts;
 - (iii) accounts with clients and dealers except:
 - (a) bona fide cash settlement accounts with members of the I.D.A., or the Toronto, Montreal, Canadian, Vancouver, New York, American, Midwest, Philadelphia-Baltimore, and London stock exchanges, or the Paris Bourse, or the Acceptance Houses Committee, London, and;
 - (b) bona fide cash settlement accounts with approved affiliates, and;
 - (c) accounts with defined financial institutions, excluding individual outstanding debit (long/receivable) transactions due for settlement more than 10 days beyond the regular delivery dates as defined in Regulation 800. However, margin will not be required on these extended delivery transactions (or portions thereof) if one of the following two conditions exist:
 - (1) The Member can specifically identify an outstanding credit (short/payable) transaction(s) with a "defined financial institution", for the same security and also due for settlement more than 10 days beyond the regular delivery dates.
 - (2) The Member's inventory has a short position in the same security.

- (d) bona fide cash settlement accounts that have not been outstanding more than 21 days past the normal settlement date.
- (j) "total liabilities" means all liabilities, including adequate provision for income taxes, but excluding debts, the payment of which is postponed in favour of other creditors of the Member pursuant to an agreement in writing in a form satisfactory to the District Association Auditors.
- (k) "reporting on a trade date" means including in Statements A, B, C and D and Supplementary Schedules 1 to 9, all assets and liabilities resulting from sales and purchases of securities on or before the reporting date, even though they may be for normal settlement after the reporting date.
- (l) "reporting on a settlement date" means excluding from Statements A, B, C and D and Supplementary Schedules 1 to 9, all assets and liabilities resulting from sales and purchases of securities during the last three business days of the reporting period for which the normal settlement date is after the reporting date.

101. Each Member shall have and maintain at all times a minimum net free capital of \$50,000; and such net free capital must at least be equal to the sum of:

- 10% of the first \$2,500,000 of adjusted liabilities, plus
- 8% of the next \$2,500,000 of adjusted liabilities, plus
- 7% of the next \$2,500,000 of adjusted liabilities, plus
- 6% of the next \$2,500,000 of adjusted liabilities, plus
- 5% of adjusted liabilities in excess of \$10,000,000.

101B Will
cease to be
operative
as at 1/7/69

101.B Notwithstanding the foregoing, the minimum net free capital requirement for Members who deposit all clients' free credit balances in a separate clients' trust account shall be \$25,000, subject to the further requirements of 101.

102. Notwithstanding the foregoing, a Member who is also a member of an exchange recognized by the National Executive Committee as having minimum capital requirements for all members at least equivalent to the requirements prescribed by By-law 17 and the Regulations and which is subject to the audit requirements of the said exchange may at its option compute its minimum net free capital in accordance with the rules of such exchange in lieu of Part 1A of the Regulations. For the purposes of this Regulation 102 the National Executive Committee hereby recognizes, and for the purposes of By-law 16 the National Executive Committee hereby designates, the following exchanges:

The American Stock Exchange
The Canadian Stock Exchange
The Montreal Stock Exchange
The New York Stock Exchange
The Toronto Stock Exchange
The Vancouver Stock Exchange

103. For the purpose of this Part, the following margin requirements are hereby prescribed:

BONDS, DEBENTURES, TREASURY BILLS and NOTES

- I. Bonds, debentures, treasury bills, and other securities of or guaranteed by the Government of Canada, of the United Kingdom and of the United States, and Canadian chartered bank acceptances maturing (or called for redemption):

within 6 months	1/10 of 1% of market value
over 6 months to 1 year	1/2 of 1% of market value
over 1 year to 3 years	1% of market value
over 3 years to 10 years	2% of market value
over 10 years	4% of market value

- II. Bonds, debentures, treasury bills and other securities of or guaranteed by any Province of Canada, maturing (or called for redemption):

within 6 months	1/2 of 1% of market value
over 6 months to 1 year	3/4 of 1% of market value

over 1 year to 3 years	1 1/2% of market value
over 3 years to 10 years	3% of market value
over 10 years	5% of market value

III. Bonds, debentures or notes (not in default) of or guaranteed by any municipal corporation in Canada, maturing:

within 92 days	1% of market value
93 days to 1 year	2% of market value
over 1 year	5% of market value

Bonds and debentures (not in default) of or guaranteed by any School Corporation, Religious Order or Hospital Corporation in Canada:

5% of market value.

IV. Other non-commercial bonds and debentures, (not in default):

10% of market value.

V. Commercial bonds, debentures and notes, (not in default), maturing:

within 1 year	4% of market value (a)
over 1 year to 3 years	5% of market value (a)
over 3 years to 10 years	7% of market value (a)
over 10 years	10% of market value (a)

(a) (i) if convertible and selling over par, apply the above rates on par value and add 50% of the excess of market value over par when convertible into securities acceptable for margin purposes or 100% of the excess of market value over par when convertible into securities not acceptable for margin purposes. If convertible and selling at or below par, the quoted rates apply.

(ii) if selling at 50% of par value or less, the margin required is 50% of the market value.

VI. Acceptable commercial, corporate and finance company notes – readily marketable and maturing:

within 182 days	2% of market value
183 to 365 days	3% of market value

For the purpose of this Regulation, acceptable notes are notes issued by a company, or guaranteed by a parent, with net worth of not less than \$10,000,000 which files an annual prospectus under a Provincial Securities Act and provides the dealer with a copy, or alternatively provides the dealer with a copy of the borrowing by-law and the resolution authorizing promissory notes and listing signing officers.

VII. Bonds in default: 50% of market value

VIII. Income bonds which have paid in full interest at the stated rate for the two preceeding years as required by the related trust indenture which must specify that such interest be paid if earned:

Currently paying interest at the stated rate:

10% of market value

Not paying interest, or paying at less than the stated rate:

50% of market value

BANK PAPER

Deposit certificates, promissory notes or debentures issued by a Canadian chartered bank maturing:

within 92 days	1% of market value
93 days to 1 year	2% of market value
over 1 year to 3 years	3% of market value
over 3 years to 10 years	5% of market value
over 10 years	10% of market value

TRUST COMPANY PAPER

Guaranteed investment certificates or promissory notes issued by a Canadian trust company maturing:

within 92 days	1% of market value
93 days to 1 year	2% of market value
over 1 year to 5 years	5% of market value

ACCEPTABLE FOREIGN BANK AND FINANCE COMPANY PAPER

Deposit certificates or promissory notes issued by a foreign bank, finance company, or agencies of Canadian chartered banks in New York, maturing:

within 92 days	2% of market value
93 days to 1 year	3% of market value
over 1 year and up to 3 years	4% of market value

For the purpose of this Regulation, acceptable paper is deposit certificates or promissory notes issued by a bank or finance company domiciled in the United States or the United Kingdom with net worth of not less than \$25,000,000.

NATIONAL HOUSING ACT (N.H.A.)

Insured Mortgages 6% of market value

STOCKS

1. Listed on any recognized stock exchange in Canada or the United States or on the stock list of the London Stock Exchange and selling at over \$1:
50% of market value
2. Subject to the existence of an ascertainable market among brokers or dealers the following unlisted securities shall be accepted for margin purposes on the same basis as listed stocks:
 - (a) Securities of insurance companies licensed to do business in Canada
 - (b) Securities of Canadian banks
 - (c) Securities of Canadian trust companies
 - (d) Securities of mutual funds qualified by prospectus for sale in any Province of Canada
 - (e) Other senior securities of listed companies
 - (f) Securities which qualify as legal for investment by Canadian life insurance companies, without recourse to the basket clause.
 - (g) Unlisted securities in respect of which application has been made to list on a recognized stock exchange in Canada and approval has been given subject to the filing of documents and production of evidence of satisfactory distribution may be carried on margin for a period not exceeding 90 days from the date of such approval.
3. All other stocks not mentioned above:
100% of market value

UNITS

According to components.

104. (1) Where a Member owns bonds or debentures of one maturity issued or guaranteed by the Government of Canada and has a short position in bonds or debentures of another maturity issued or guaranteed by the Government of Canada for which the same rate of margin has been prescribed, the two positions may be offset and the required margin computed with respect to the net long or net short position only. Long and short positions in bonds or debentures issued or guaranteed by a Province of Canada may also be offset in a similar manner if the same margin rate is prescribed for both issues even if this may result in offsetting obligations of one Province against obligations of another Province. This Regulation also applies to future purchase and sales commitments.

406/68

(2) Where an underwriter has a commitment to purchase a new issue of securities, the commitment does not require to be margined until the termination of the "withdrawal" clause, provided the "withdrawal" or "out" clause allows for the cancellation of the commitment in the event of unsaleability due to market conditions. After termination of the "withdrawal" clause the issue shall be margined at the margin rate prescribed in Regulation 103 except that the margin rate allowed by the Member's bankers may be used in the course of distribution from the date on which the Member's bankers agreed, in writing, to carry the securities until 30 days have elapsed from the time the issuer of the securities was first in a position to make deliveries. For the subsequent 60 days thereafter unlisted stock that would normally require 100% margin may be margined at 50% provided the rate allowed by the Member's bankers, in writing, does not exceed 50% during this second period.

105. All outstanding purchase and sales commitments and repurchase agreements may be included in the Statement of Assets and Liabilities or in the alternative must be reported in the Statement of Future Purchase and Sales Commitments and included in the Statement of Adjusted Liabilities. Members reporting on a settlement date basis may exclude from this report transactions of the last three business days not due for regular settlement (as defined in Regulation 800), until after the reporting date.

106. No Member shall pay or make any payment on account or in respect of any debt owing by such Member to any creditor of such Member contrary to the provisions of, or otherwise fail to comply with, any subordination or other agreement to which such Member and the District Association Auditors, or a member thereof, are parties.

Passed
23/9/68

PART 1B

MINIMUM RECORDS

107. As required under By-law 17.2 every Member shall make and keep current the following books and records relating to its business.

(1) Blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all other debits and credits. Such records shall show the account for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered.

(2) Ledgers (or other records) maintained in detail reflecting all assets and liabilities, income and expense and capital accounts.

(3) Ledger accounts (or other records) itemizing separately as to each cash and margin account of every customer, all purchases, sales, receipts, and deliveries of securities and commodities for such account and all other debits and credits to such account. In addition, statements must be sent to customers on at least the following basis: monthly – for all customers in whose accounts entries of any nature are made during the month; quarterly – for all customers having a dollar balance or security position (including securities held in safekeeping).

(4) Ledgers (or other records) reflecting the following:

- (A) securities in transfer;
- (B) dividends and interest received;
- (C) securities borrowed and securities loaned;
- (D) monies borrowed and monies loaned (together with a record of the collateral therefor and any substitutions in such collateral);
- (E) securities failed to receive and failed to deliver.

(5) A securities record or ledger reflecting separately for each security as of the trade or settlement dates all “long” and “short” positions (including securities in safekeeping) carried for the Member’s account or for the account of customers, showing the location of all securities long and the offsetting position to all securities short and in all cases the name or designation of the account in which each position is carried.

(6) A memorandum of each order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. Such memorandum shall show the terms and conditions of the order or instructions and of any modification or cancellation thereof, the account for which entered, the time of entry, the price at which executed and to the extent feasible, the time of execution or cancellation. Orders entered pursuant to the exercise of discretionary power by a Member, or any employee thereof, shall be so designated.

(7) Copies of confirmations of all purchases and sales of securities and copies of notices of all other debits and credits for securities, cash and other items for the account of customers. Such written confirmations shall set forth at least the following:

- (a) the quantity and description of the security;
- (b) the consideration;
- (c) whether or not the person or company registered for trading acted as principal or agent;
- (d) if acting as agent in a trade upon a stock exchange the name of the person or company from or to or through whom the security was bought or sold.
- (e) the day and the name of the stock exchange, if any, upon which the transaction took place;
- (f) the commission, if any, charged in respect of the trade; and
- (g) the name of the salesman, if any, in the transaction.

(8) A record in respect of each cash and margin account containing the name and address of the beneficial owner (and guarantor, if any) of such account and in the case of a margin account a properly executed margin agreement containing the signature of such owner (and guarantor, if any); provided that, in the case of a joint account or an account of a corporation, such records are required only in respect of the person or persons authorized to transact business for such account.

(9) A record of all puts, calls, spreads, straddles and other options in which the Member has any direct or indirect interest or which the Member has granted or guaranteed, containing at least an identification of the security and the number of units involved.

(10) A record of the proof of money balances of all ledger accounts in the form of trial balances and a record of the computation of net free capital, adjusted liabilities and capital required. Such trial balances and computations shall be prepared currently at least once a month.

GUIDE TO INTERPRETATION OF REGULATION 107

Regulation 107 represents a codification of bookkeeping practices now followed by most Members in that it specifies the various items of information which must be reflected upon the firm's books. The Regulation does not, however, require the various books and records specified therein to be kept on any prescribed form or type of book, ledger or card system.

(1) "Blotters or similar records"

The "blotter", as it is often called, is a dealer's or broker's book of original entry and contains an historical account of all the daily transactions of the firm or its customers. The term "blotter" is often used synonymously with "diary", "journal", or "day book". Larger firms may keep a number of different blotters, each to record a separate type of transaction. For instance, a Member operating a seat on a securities exchange ordinarily maintains a clearing house blotter in which are recorded the purchases and sales of cleared securities in board lots and an "ex-clearing blotter" or several other blotters in which are recorded transactions in odd lots, unlisted securities, bonds, cash, receipts and deliveries, and journal entries. Over-the-counter houses may also keep separate blotters for special kinds of business such as a "cash book" showing only payments and receipts of cash. Blotters are either "To Receive" blotters, in which are recorded purchases, receipts of securities and payments of cash, or "To Deliver" blotters, in which are recorded sales, deliveries of securities and receipts of cash.

The blotter is usually a loose-leaf affair showing on the bought (to receive) side, from whom bought, quantity, security, certificate numbers, price, amount, interest (if any), commission (if any), trade and settlement dates, and the account for which bought. The sold (to deliver) side shows to whom sold, quantity, security, certificate numbers, price, amount, tax, interest (if any), commission (if any), trade and settlement dates and account for which sold. Blotters or similar records, besides being occasionally kept in bound ledgers, may also be kept on cards separated by days or may consist of carbon copies of customers' confirmations arranged and bound by days, provided that all of the information specified in section 1 of the Regulation is contained with respect to each entry.

(2) "The general ledger"

This is the record in which all asset, liability, capital, income and expense accounts are kept and from which a trial balance can be abstracted in order to prepare financial statements showing the Member's financial condition. Entries in this record are derived from the "blotters" referred to in section 1 of the Regulation. Under present day double entry systems, this record requires little explanation.

(3) "Customers' accounts"

This section requires ledger accounts (or other records) itemized separately as to each cash and margin account of every customer (regardless of the frequency of transactions with or for the customer), and as to each account (if any) of the firm (i.e. inventory) which should show all purchases and sales (including the settlement

dates thereof), receipts and payments of cash and where securities or commodities are otherwise received in or delivered out of the account, all such receipts and deliveries. The records should also itemize all other debits and credits to each such account.

Whether the bookkeeping system is maintained on machines, or the ledger is handwritten, the account pages, or account cards in the case of card system, usually consist of columns for the date, number of shares bought or received into the account, number of shares sold or delivered out of the account, name of security, money debits and credits and usually a balance column and columns for calculating interest on balances. For purposes of this Regulation only, the definition of "customer" shall include the investing public, financial institutions, other investment dealers and stockbrokers, affiliates and partners, shareholders, directors, officers and employees of a Member firm and its affiliates.

Statements sent to customers shall set forth the dollar balance carried forward from the previous statement; all entries shown in the account since the previous statement date; and the final dollar balance and the security position as of the statement date. The statements shall also indicate the items included in the final security position which are held in safekeeping.

Members not depositing clients' free credit balances in a trust bank account should refer to Regulation 1402 for details of the special notation that must be affixed to all statements sent to clients.

(4) "Secondary or subsidiary records"

These records are made up from the blotters or other records of original entry. Hence, the data appearing in such records is generally posted daily or at such intervals as the business requires. There follows a brief description of such subsidiary records.

(A) "Securities in transfer"

The certificates which a Member receives upon consummation of purchases may often be in a "street" name or in the names of individuals who may previously have owned the security. When a Member receives instructions to have certificates registered in the name of the purchaser the certificates are sent to the transfer agent after the purchaser has paid for them. The purpose of this paragraph of the Regulation is to require the keeping of a record showing all securities "in transfer". This record usually shows the number borne by the transfer receipt received from the transfer agent, the number of shares or the par value, name of security, name in which it was registered, new name (i.e., the new name in which new certificates will be registered), date sent out to transfer, old certificate number, date received back from transfer, and new certificate number.

(B) "Dividends and interest received"

For the purpose of this item of the Regulation it is necessary that a record be maintained by the firm with respect to interest or dividends paid by corporations on bonds or stock, respectively, carried by the Member for the account of customers but registered in some name other than that of the customer. The general practice, which would represent compliance with the rule, is to set up a sheet showing the name of the security, the ex-dividend date (or interest date), the rate per share and the payable date. Information is obtained from the "stock record" or, as it is sometimes called, the "securities position record", (the nature of which is explained hereafter) showing the names of both "long" and "short" customers. The information is then recorded on the dividend and interest register. All customers who are "long" are credited with their proportionate interest in monies received by the firm on account of the dividend or interest to which such customers are entitled. All customers who are "short" on the record dividend date, or the interest date in the case of bonds, are charged with the amount of the dividend or interest payable on their short position. In addition, all bearer securities in the firm's possession or in hypothecation on the record or interest date must be examined to determine who the firm must claim against for payment of the dividend or interest. Members should make a practice of registering dividend or interest paying securities in their own name (or the customers' names when they are fully paid) in order to eliminate the clerical work and potential loss that results when a claim must be made against a previous owner.

(C) "Securities borrowed and securities loaned"

In borrowing securities to make deliveries against sales or in lending securities to other dealers or brokers, it is necessary to enter such transactions in the blotters, day book or other records of original entry. This requirement can be complied with by posting from the blotters or other records of original entry onto the securities borrowed and loaned records the date borrowed or date loaned, name of the firm from whom borrowed or to whom loaned, number of shares, name of security, price, amount, and the date returned. In some cases securities borrowed and loaned records also provide an additional column showing the interest rate or premium on stock borrowed or loaned. The information may be kept on cards, in a loose-leaf or in a bound record, and the "date returned" may be stamped in with a regular date stamp.

(D) "Monies borrowed and monies loaned, etc."

A record must be kept of all borrowings, regardless of whether customers' or the firm's securities are pledged as collateral. This record should show the name of the bank, the date, the interest rate, the amount of the loan, terms of the loan, and date when paid. Usually a separate page is made up for each loan. In connection with this information there must be kept a collateral record consisting of the number of shares, or principal amount in the case of bonds, name of the security, and certificate numbers in respect of all collateral pledged to secure the particular loan. Substitutions in collateral are usually shown on an additional column on the page or card kept for the particular loan. This information is obtained from the blotter, cash book, day book or other record of original entry and is transferred to the subsidiary record. Many Members find it convenient (and the Regulation so permits) to keep their loan records on a card index system which reflects the above information. Others keep only their record of collateral substitutions on cards, maintaining a loose leaf or bound ledger for the other required details of such loans.

(E) "Securities failed to receive or deliver"

These are also subsidiary records and are constructed from information contained on the blotters or other records of original entry. Upon learning that a dealer or broker on the other side of a transaction will fail to deliver on the date upon which delivery is due, either under the agreement between the buyer and the seller or under clearing house rules, this item requires that records must be made which should show the "fail date" (i.e., the date on which delivery was due but not made), number of shares (or principal amount of bonds), name of security, purchase price, broker or dealer from whom delivery is due, and date received. Conversely, when the firm fails to deliver it must set up records which should show the date on which delivery was due, number of shares (or principal amount of bonds), name of security, to whom sold, sales price and date on which delivery is made. An additional column may also provide for any remarks pertinent to the failure to receive or failure to deliver of that particular security. The total amount of open items in the "fail to receive" and "fail to deliver" records should agree with the "fail to receive" and "fail to deliver" accounts in the firm's general ledger kept pursuant to section 2 of this Regulation.

(5) "Securities record or ledger"

This section requires that the securities record be posted currently so as to show all positions as of no later than the settlement dates. The securities record may, of course, be posted on the "trade" or execution date or any other date prior to the settlement date. Members which handle a large volume of business may keep separate "securities records" or "position records" as they are often called for stocks and for bonds. The stock or securities record is seldom a bound record but it is usually kept in a loose-leaf book, or in the form of a group of cards or of related groups of cards, containing the above information. The typical security position record is a columnar record with a page or portion thereof for each security. The page should show the name of the security, the customers' and other accounts which are "long" and "short" that security, the daily changes in their position, the location of each security, and the total of the long or short position for the account of customers and the firm and partners. The more frequently recurring items often are printed on the form for speed in recording and in order to eliminate the necessity of writing in each item. Many forms for stock or securities position records are printed with or otherwise contain an appropriate space for the name of the account and a column for

each business day in the month. The month-end securities balances may be carried forward to new sheets at the beginning of each new month. This record should be reviewed frequently to ensure it is "in balance" (i.e. for each security the total long positions should equal the total short positions).

(6) "Memoranda of orders"

In this section the term "instruction" shall be deemed to include instructions between partners or directors and employees of a Member. The term "time of entry" is specified to mean the time when the Member transmits the order or instruction for execution, or if it is not so transmitted, the time when it is received.

It is the usual practice (and probably the more desirable) to record all of the required information upon the face of the order ticket or other slip which records the order or instruction. If such tickets or slips are filed together, they would themselves constitute the required record in respect of orders or instructions for the purchase or sale of securities.

(7) "Confirmations and notices"

The Provincial Securities Commissions require that every person or company registered for trading in securities who has acted as principal or agent in connection with any trade in a security shall promptly send or deliver to the customer a written confirmation of the transaction, setting forth the details required in this section of the Regulation. For the purposes of clauses (d) and (g), a person or company or a salesman may be identified in a written confirmation by means of a code or symbols if the written confirmation also contains a statement that the name of the person, company or salesman will be furnished to the customer on request.

(8) "Records of cash and margin accounts"

A margin agreement between a Member and a customer shall define at least the following:

- (a) the obligation of the customer in respect of the payment of his indebtedness to the Member and the maintenance of adequate margin and security;
- (b) the obligation of the customer in respect of the payment of interest on debit balances in his account;
- (c) the rights of the Member in respect of raising money on and pledging securities and other assets held in the customer's account;
- (d) the extent of the right of the Member to make use of free credit balances in the customer's account;
- (e) the rights of the Member in respect of the realization of securities and other assets held in the customer's account and in respect of purchases to cover short sales, and whether any prior notice is required, and if notice be required, the nature and extent of it and the obligations of the customer in respect of any deficiency;
- (f) the extent of the right of the Member to utilize a security in the customer's account for the purpose of making a delivery on account of a short sale;
- (g) the extent of the right of the Member to use a security in the customer's account for delivery on a sale by the Member for his or its own account or for any account in which the Member, any partner therein or any director thereof, is directly or indirectly interested;
- (h) the extent of the right of the Member to otherwise deal with securities and other assets in the customer's account and to hold the same as collateral security for the customer's indebtedness; and
- (i) that all transactions entered into on behalf of the customer shall be subject to the regulations of the Investment Dealers' Association of Canada and/or any securities exchange if executed thereon.

(9) "Puts, calls, straddles and other options"

Such a record may be kept in any suitable form which shows the date, details regarding the option, name of security, number of shares, and the expiration date. Letters pertaining to such options, including those received from and addressed to customers, should be kept together with the record.

(10) "Monthly trial balances and capital computations"

Such trial balances and computations will serve as a check upon the current status and accuracy of the ledger accounts which Members are required to maintain and keep current and will also help to keep Members currently informed of their capital positions as required under By-law 17.1.

A Member should, of course, keep currently informed as to his capital position and make a computation as often as necessary to insure that he has adequate capital at all times; but Members must preserve only the monthly computation mentioned above. On the other hand, Members whose capital position is substantially in excess of that required, may omit detailed schedules and analyses in support of the computation if they apply a more stringent application of the Regulation governing the computation. For example, when calculating net free capital, inventories can be grouped into broader margin categories and maximum margin rates applied; offsetting provisions such as those contained in Regulation 104 (1) can be ignored; and assets partly allowable or of questionable value can be excluded in their entirety. When net free capital has been calculated in this conservative manner it is necessary to determine the maximum adjusted liabilities that can be supported (i.e. net free capital of \$200,000 can support adjusted liabilities of up to \$2,000,000). The calculation of adjusted liabilities can then be limited to the deductions necessary to reduce total liabilities to the maximum allowed by the net free capital available.

When a Member cannot prove he has adequate capital he must notify the Association Examiner and the District Association Auditor immediately.

Passed
23/9/68

PART 1C

AUDIT REQUIREMENTS

108. The audit required under By-law 16 shall be made in accordance with generally accepted auditing standards and shall include a review of the accounting system, the internal accounting control and procedures for safeguarding securities including appropriate tests thereof for the period since the previous audit date. It shall include all procedures necessary under the circumstances to substantiate the assets and liabilities and securities and commodities positions as of the date of the audit and to permit the expression of an opinion by the independent Auditor as to the financial condition of the Member at that date. Based upon such audit, the Member's Auditor shall comment upon any material inadequacies found to exist in the accounting system, the internal accounting control and procedures for safeguarding securities, and shall indicate any corrective action taken or proposed. These comments may be submitted in a supplementary certificate and included with the annual filing or they may be submitted in a separate confidential filing. The opinion expressed by the Member's Auditor shall not contain a qualification where it is reasonably practicable for the Member to revise the statement presentation with respect to the matter that would otherwise be the subject of a qualification.

(A) The scope of the audit shall include the following procedures, but nothing herein shall be construed as limiting the audit or permitting the omission of any additional audit procedure which any Member's Auditor would deem necessary under the circumstances. As of the audit date the Member's Auditor shall:

- (1) Compare ledger accounts with the trial balances obtained from the general and subsidiary ledgers and prove the aggregates of subsidiary ledgers with their respective controlling accounts.
- (2) Account for by physical examination and comparison with the books and records: all securities, including those held in segregation and safekeeping; cheques and currency; warehouse receipts; and other assets on hand, in vault, in box or otherwise in physical possession. Control shall be maintained over such assets during the course of the physical examination.
- (3) Verify securities in transfer and in transit between offices of the Member.
- (4) Balance positions in all securities and commodities as shown by the books and records at the audit date.
- (5) Reconcile balances shown by bank statements with ledger control accounts. After giving ample time (at least 15 days) for clearance of outstanding cheques and transfers of funds, obtain bank statements and cancelled cheques of the accounts directly from the depositories, and by appropriate audit procedures substantiate the reconciliation as of the audit date.
- (6) Obtain written confirmations with respect to the following:
 - (a) Bank balances and other deposits.
 - (b) Open contractual positions and deposits of funds with clearing corporations and associations.
 - (c) Money borrowed and detail of collateral.
 - (d) Accounts, securities, commodities and commitments carried for the Member by others.
 - (e) Details of:
 - (i) Securities borrowed
 - (ii) Securities loaned
 - (iii) Securities failed to deliver
 - (iv) Securities failed to receive
 - (v) Contractual commitments.

- (f) Customers' accounts. Large accounts, numbered or coded accounts, and a sample of other accounts (the size of the sample shall be governed by the adequacy of the internal control which is present) shall be confirmed using positive (requiring written reply) confirmation requests and the remainder of the accounts shall be confirmed using negative confirmation requests. Customers' accounts without balances or security positions and accounts closed since the last audit date shall be confirmed on a test basis (the extent to be governed by the adequacy of the internal control which is present).
- (g) Partners', officers', directors', shareholders' and employees' accounts.
- (h) Borrowings and accounts covered by subordination agreements acceptable to the District Association Auditors.
- (i) Guarantees where required to margin or secure accounts guaranteed as of the audit date.
- (j) All other accounts which in the opinion of the Member's Auditor should be confirmed.

Note: Compliance with requirements for obtaining written confirmation with respect to the above accounts shall be deemed to have been made if requests for confirmation have been mailed by the Member's Auditor in an envelope bearing his own return address and second requests are similarly mailed to those not replying to the first requests for positive confirmation. Appropriate alternate verification procedures must be used where replies are not received to second requests.

- (7) Obtain a written statement from the proprietor, senior partner (if a partnership) or senior officer and director (if a corporation) as to the assets, liabilities, and accountabilities, contingent or otherwise, not recorded on the books of the Member.
- (B) The Member's Auditor shall review the accounting system in order to ascertain whether or not in his opinion it complies with the minimum requirements of Part 1B of the Regulations.
- (C) By-law 17.3 requires that all securities of a customer fully paid for and which have come into the possession of the Member and are not subject to any lien or charge in favour of the Member shall be segregated and distinguished as held in trust for the customer owing the same.
 - (i) Should it be found that any securities which should have been "segregated and distinguished" as required under By-law 17.3 were not so segregated and distinguished, then same must be reported in full to the District Association Auditors setting forth at least the following: the number of shares or par value of bonds; a description of the security; the date the security became hypothecated and the date it was released from hypothecation; the party to whom hypothecated (bank, trust company, etc.); and any other pertinent information.
 - (ii) In cases where the free securities are out for transfer or have been "failed" with other dealers or are in "safekeeping" with another dealer, all in the normal course of business, it is in order to exclude same from those considered as under hypothecation. A test of the transfer and "fail" items should be made subsequent to the date of the audit to establish that safekeeping items when received are properly segregated. Any items not segregated must be reported to the District Association Auditor. The system of segregation should be reviewed and any inadequacies reported as provided above.
- (D) The Member's Auditor shall examine the insurance carried by the Member to determine whether or not it is of the type and in the amount required by Part II of the Regulations. If the Member is not complying with this requirement the Member's Auditor must report in the manner set out in By-law 17.6.

- (E)(i) Any condition disclosed by the audit that would cause the net free capital of the Member to be less than that prescribed by the National Executive Committee and set out in Part 1A of the Regulations shall be reported to the District Association Auditor and the Association Examiner immediately upon the ascertainment of such facts.
- (ii) Where a serious weakness or breakdown in the accounting system, the internal accounting control or the procedures for safeguarding securities is discovered by the Member's Auditor, he shall report to the District Association Auditor and the Association Examiner immediately upon the ascertainment of such facts.
- (F) A copy of the financial statements and all audit working papers shall be retained for at least six years. The two most current years shall be kept in a readily accessible location. All working papers shall be made available for audit and review by the Association Examiners or the District Association Auditor.

PART II

INSURANCE

200. Every Member of the Association shall, by means of a Broker's Blanket Bond or Bonds (with Discovery Rider attached or Discovery Provisions incorporated in the Bond), effect and keep in force Insurance against losses arising as follows:

CLAUSE (A)—FIDELITY—Any loss through any dishonest fraudulent or criminal act of any of the Employees, committed anywhere and whether committed alone or in collusion with others, including loss of Property through any such act of any of the Employees, (excluding trading losses—see Clause (A)—“Trading Losses” below);

CLAUSE (A)—“TRADING LOSSES”—Any loss through any dishonest, fraudulent or criminal act of any Employee resulting directly or indirectly from trading with or without the knowledge of the Insured, in the name of the Insured or otherwise, whether or not represented by any indebtedness or balance shown to be due the Insured on any customer's account, actual or fictitious, and notwithstanding any act or omission on the part of any Employee in connection with any account relating to such trading, indebtedness or balance;

CLAUSE (B)—ON PREMISES—Any loss of money and securities or other Property through robbery, burglary, theft, hold-up or other fraudulent means, mysterious disappearance, damage or destruction while within any of the Insured's offices, the offices of any banking institution or Clearing House or within any recognized place of safe-deposit, as more fully defined in the Standard Form of Brokers Blanket Bond (hereinafter referred to as the “Standard Form”);

CLAUSE (C)—IN TRANSIT—Any loss of money and securities or other property through robbery, burglary, theft, hold-up, misplacement, mysterious disappearance, damage or destruction, while in transit in the custody of any Employee or any person acting as messenger except while in the mail or with a carrier for hire other than an armoured motor vehicle company, as more fully defined in the Standard Form;

CLAUSE (D)—FORGERY OR ALTERATIONS—Any loss through forgery or alteration of any cheques, drafts, promissory notes or other written orders or directions to pay sums in money, excluding securities, as more fully defined in the Standard Form;

CLAUSE (E)—SECURITIES—Any loss through having purchased or acquired, sold or delivered, or extended any credit or acted upon securities or other written instruments which prove to have been forged, counterfeited, raised or altered, or lost or stolen, or through having guaranteed in writing or witnessed any signatures upon any transfers, assignments or other documents or written instruments, as more fully defined in the Standard Form.

201. Every Member of the Association shall also effect, employ and keep in force Mail Insurance against loss arising by reason of any shipments of money or securities, negotiable or non-negotiable, by first-class mail, registered mail, registered air mail, express or air express.

202. The minimum amounts of Insurance to be maintained shall be as follows:

CLAUSES (A), (B) and (C)

The greater of

- (a) \$100,000
- (b) the previous fiscal year's total expenses, excluding interest,
- (c) 3% of money market, commercial and finance paper and 5% of all other securities owned at the previous fiscal year-end,
- (d) 15% of the value of securities held for clients at the previous fiscal year end.

CLAUSE (A)—“TRADING LOSSES”

The greater of

- (a) \$100,000
- (b) 6% of the amount of Insurance required under Clauses (A), (B) and (C).

CLAUSE (D)

The greater of

- (a) \$100,000
- (b) 5% of the amount of Insurance required under Clauses (A), (B) and (C).

CLAUSE (E)

The greater of

- (a) \$50,000
- (b) 6% of the amount of Insurance required under Clauses (A), (B) and (C).

SAFE-DEPOSIT BOXES IN BANKS OR OTHER INSTITUTIONS

Where the value of securities carried in a safe-deposit vault of a bank or other institution exceeds the amount of insurance carried under CLAUSE (B), such excess shall be substantially insured by means of a safe-deposit box policy (basic burglary policy) on the contents of the safe-deposit box or boxes in each vault containing such excess value.

SAFEKEEPING IN MEMBERS' OWN VAULTS

Where a Member's and clients' securities are carried in the Member's own vaults and where the value of the securities carried exceeds the amount of insurance carried under CLAUSE (B), such excess shall be fully insured by means of a safe burglary policy.

PROVISOS

- (a) The maximum Insurance to be maintained under Clauses (A), (B) and (C) need not exceed \$5,000,000.
- (b) The value of securities in transit in the custody of any employee or any person acting as a messenger shall not at any time exceed the protection provided under Clause (C).
- (c) Members shall be deemed to be complying with By-law 17.5 and these Regulations should there be insufficient coverage, provided that any such deficiency does not exceed 10% of the Insurance requirement and that evidence is furnished within two months of the completion of the annual audit that the deficiency has been corrected.
- (d) The "previous fiscal year" referred to in determining the amount of Insurance required under Clauses (A), (B) and (C) is the fiscal year ending not more than fifteen months prior to the completion of the annual audit.
- (e) Insurance against Clause (E) losses (Securities) may be incorporated in the Brokers' Blanket Bond or may be carried by means of a Rider attached thereto or by a Separate Securities Forgery Bond.

PART III REGISTERED REPRESENTATIVES (SALESMEN)

300. For the purpose of By-law 18 and this Part, the Toronto, Montreal, Canadian and Vancouver Stock Exchanges are recognized stock exchanges.

301. Unless the applicant is registered as a registered representative with a recognized stock exchange, the following fees shall accompany each application submitted to the Association:

\$10.00 for each REGISTERED REPRESENTATIVE APPLICATION
AND AGREEMENT FORM

\$ 5.00 for each APPLICATION AND AGREEMENT FORM FOR
TRANSFER OF EMPLOYMENT OF A REGISTERED REPRESENTATIVE

Such fees shall be in addition to any charges payable by the Members or their sales representatives for writing of examinations or taking of courses. No such fee shall be refunded, whether or not the application is accepted.

302. A person for whom application for registration as a registered representative of a Member is being made shall take and pass The Canadian Securities Course as a condition precedent to such registration unless such person:

- (i) was employed as a sales representative by a Member on November 15, 1962 and has been continuously employed in such capacity since that date;
- (ii) is already a graduate of The Canadian Securities Course;
- (iii) is registered or approved as a registered representative under the rules of a recognized stock exchange; or
- (iv) is exempted pursuant to Regulation 303.

303. The applicable District Executive Committee may, in its discretion, exempt from the educational requirements of Regulation 302:

- (i) a person who, for a period of at least sixty days within the six months' period preceding the date of application for his registration as a registered representative, had been a partner or a director of a Member or a member of a recognized stock exchange and who has had at least five years' experience in the investment business;
- (ii) a person who is already a graduate of former Educational Course I of the Association and who, in the opinion of the applicable District Executive Committee, has sufficient sales experience in the investment business to warrant such exemption;
- (iii) a person who is already a graduate of former Educational Course I of the Association but who, in the opinion of the applicable District Executive Committee, has not sufficient sales experience to warrant exemption under (ii) of this Regulation 303, if such person completes such assignment of The Canadian Securities Course as the applicable Committee may specify and passes an examination based on such assignment;
- (iv) a person who:
 - (a) was formerly employed as a registered representative by a Member or by a member of a recognized stock exchange, and
 - (b) has had at least five years' experience in the investment business during the ten years preceding the date of application for his registration, and
 - (c) has had, for a period of at least sixty days within the six months' period preceding the date of application for his registration as a registered representative, experience in the investment business;
- (v) in special cases, but only with the approval of the President of the Association, a person who does not qualify for exemption under subdivision (i) or (iv) of this Regulation 303.

304. Notwithstanding Regulation 302, the applicable District Executive Committee may grant interim approval of an application for registration of a person as a registered representative if, at the date of such application, such person:

- (i) is employed by a Member solely for the purposes of soliciting orders for mutual fund securities;
- (ii) is registered under the securities laws of each jurisdiction in which he deals with the public as a mutual funds salesman; and
- (iii) either has been registered in accordance with (ii) above for at least one year ending not less than thirty days' prior to the date of application or has completed the full Canadian Mutual Funds Course prescribed by the Canadian Mutual Funds Association.

provided that:

- (i) if such person shall not have passed The Canadian Securities Course within one year from the date of such interim approval, the application for registration of such person shall be deemed to be rejected; and
- (ii) during the interim approval period, such person shall not accept orders for the purchase or sale of any securities other than mutual fund securities.

305. The Secretary shall give notice to all recognized stock exchanges in Canada and to all securities commissions in Canada of all registrations of salesmen that are approved and of all registrations of salesmen that are cancelled.

306. The National Executive Committee may from time to time prescribe forms on which all applications for registration or transfer of registration, as the case may be, shall be made.

Passed
23/9/68

PART IV

SUSPENDED MEMBERS

400. During the period of suspension, a suspended Member shall not be entitled to exercise the rights and privileges of Membership and without limiting the generality of the foregoing, the suspended Member a) shall not be entitled to attend or vote at meetings of the Association or of any District of the Association, b) shall remove from its premises any reference to its Membership in the Association, and c) shall no longer use reference to its Membership in the Association in its advertisements, letterhead or other material, and the name of the suspended Member shall be carried in the Association's Blue Book Directory and Membership List but shall be marked with an asterisk and footnote indicating that the Member has been suspended and the period of suspension; provided that during the period of suspension the suspended Member shall continue to be liable for the payment of Annual Fees and of any assessment and provided further that so long as the Member is not in arrears in the payment of its Annual Fee or other indebtedness to the Association, the suspended Member shall be entitled to remain in the Association's Group Insurance Plan or any other insurance or retirement plans in which the Member is enrolled at the time of suspension but if not already enrolled in such Group Insurance Plan or in any other insurance or retirement plans at the time of suspension no Member under suspension may enrol therein. Within ten days after the imposition of a suspension or in the event of an appeal therefrom, within seven days after the confirmation of such suspension by the National Business Conduct Committee, the Member shall return to the Secretary its Certificate of Membership in the Association and shall advise the Secretary in writing that it has complied with the requirements of (b) and (c) above.

PART V**USE OF NAME OF THE ASSOCIATION**

500. Members may use the name of the Association on letterheads, circulars, advertising and other publicity matter, except in the case of circulars, advertising and publicity matter (not being signed letters), mailed, delivered, published or otherwise used for the purpose of giving publicity to any specific new issue of securities, other than securities authorized for investment by trustees in any Province; and Members may also use the name of the Association on their office doors and windows; provided that the name of the Association, when so used shall appear in smaller type than the name of the Member, and the reference to the name of the Association and membership therein shall be (in singular or plural form) in one or other of the following forms:

Member(s) of the Investment Dealers' Association of Canada

and/or

Membre(s) de l'Association Canadienne des Courtiers
en Valeurs Mobilières

or

Member(s) of the Investment Dealers' Association of Canada
—Association Canadienne des Courtiers en Valeurs Mobilières

or

Membre(s) de l'Association Canadienne des Courtiers
en Valeurs Mobilières

—Investment Dealers' Association of Canada.

PART VI
TRADING AND DELIVERY
GENERAL

600. Unless otherwise stated this Part shall apply to all Members and to members of other associations subscribing to the Association's Trading and Delivery Regulations (hereinafter sometimes called "dealers").

601. Members will not become or continue as members of any trading organization or association formed as kindred to the bond business and domiciled in Canada unless such an association has as part of its constitution or regulations an agreement by all its members to concur in and observe the Regulations for trading and delivery practices of the Association. (This does not mean adherence to the Constitution and By-laws of the Association.)

602. All dealers shall conduct their trading business along the lines of the present unwritten, but established, code of ethics.

603. Clearing days are defined as being all business days, except Saturdays and statutory or other legal holidays.

604. All securities having interest payable as a fixed obligation shall be dealt in on an "accrued interest" basis until maturity or a default in such payment either occurs or is announced by the debtor, whichever is the earlier event. This Regulation may be abrogated from time to time in specific cases where common practice and expediency prompt such action; due notice of such special instances to be given to all Members.

605. Sales made of securities prior to actual default or official announcement as specified in Regulation 604, but undelivered at the time of default or such announcement, shall be dealt in on an "accrued interest" basis in accordance with the terms of the original transaction.

606. Subsequent to default or official announcement as specified in Regulation 604, the securities shall be dealt in on a flat basis with all matured and unpaid coupons attached, until such time as all arrears of interest have been paid and one current coupon has been paid when due.

607. Transactions in bonds having coupons payable out of income, if, as and when earned, shall all take place upon a flat basis. Any matured and unpaid income coupons must be attached. Income bonds which have been called for redemption, should continue to be traded on a flat basis even after the call date has been published.

608. When transactions occur in bonds which have been subject to reorganization or capital adjustment with the result that holders have received as a bonus or otherwise, certain stock or script, then such transactions shall be ex stock or script, unless otherwise stated at the time the trade is made. Such bonds shall be traded flat until such time as all arrears have been paid and one current coupon has been paid when due, except where the National Executive Committee shall determine otherwise.

609. No security, with the exception of a new issue at take down date, shall be registered in the name of the customer or his nominee prior to the receipt of payment.

The absorption by a Member of bank or other charges incurred by a customer or his nominee for the registration of a security will be considered an infraction of this Regulation. A Member may absorb transfer fees incurred in the transfer of a security after payment according to a customer's instructions.

610. Members will not deal, either directly or indirectly, with or for the personal account of any employee of other Members without the written consent of a director or partner of the employee's firm. This Regulation shall not apply to the personal transactions of directors and/or partners of Members.

611. Dealers, for the purpose of communication between themselves, will be responsible for the payment of their own telephone charges and send only prepaid telegrams.

612. Should any dealer be in doubt as to whether a specific type of transaction is forbidden under this Part, it is recommended that he secure a ruling on a similar hypothetical case from the Chairman of his District.

613. The purpose of these Regulations is to spell out as far as practical what can be done under these Regulations without breaking the letter or the spirit of them. It is common knowledge that there are innumerable ways of circumventing the purposes of the Regulations, but any such method so adopted can only be considered a direct contravention of the letter and spirit of these Regulations and contrary to fair business practice.

TRADING

(Whether as Principal or Agent)

700. All transactions shall be on an "accrued interest" basis.

701. There are no spread restrictions regarding trading of Government of Canada Bonds and Government of Canada Guaranteed Bonds having an unexpired term of one year or less to maturity, (or to the earliest call date where a transaction is completed at a premium).

702. All Government of Canada Bonds and Government of Canada Guaranteed Bonds having an unexpired term of over one year but three years or less to maturity (or to the earliest call date where a transaction is completed at a premium) shall be traded in multiples of five cents.

703. All Government of Canada Bonds and Government of Canada Guaranteed Bonds having an unexpired term to maturity of longer than three years shall be traded in multiples of one-eighth. (When a bond is traded at a premium the earliest call date shall be treated as the maturity date.)

704. (a) Unless prefixed by some qualifying phrase, a dealer calling a market shall be obliged to trade Trading Units (as hereinafter defined), if called upon to trade;

(b) Any dealer asking the size of a stated market must be prepared to buy or sell at least a Trading Unit (as hereinafter defined) at the price quoted if immediately requested to do so by the Member calling the market;

(c) Trading Units shall consist of the following:

- (i) In the case of Government of Canada direct obligations and Government of Canada Guaranteed obligations having an unexpired term of less than one year to maturity (or to the earliest call date, where the transaction is completed at a premium); \$250,000 par value.
- (ii) In the case of Government of Canada direct obligations and Government of Canada Guaranteed obligations having an unexpired term of one year or longer but three years or less to maturity (or to the earliest call date, where the transaction is completed at a premium); \$100,000 par value.
- (iii) In the case of Government of Canada direct obligations and Government of Canada Guaranteed obligations having an unexpired term to maturity of longer than three years (where the bond is traded at a premium, the earliest call date shall be treated as the maturity date); \$25,000 par value.
- (iv) In the case of bonds, debentures and other obligations of or guaranteed by a Province in Canada; \$10,000 par value.
- (v) In the case of all other bonds and debentures other than Government of Canada direct obligations and Government of Canada Guaranteed obligations and bonds, debentures and other obligations of or guaranteed by a Province in Canada; \$5,000 par value.
- (vi) In the case of bonds or debentures issued with attached stock warrants, rights or other appendages and traded in unit form; \$5,000 par value of bonds or debentures, irrespective of the value of the appendages.

(vii) In the case of common and preferred shares not listed on a recognized stock exchange:

- in lots of 500 shares, if market price is below \$1
- in lots of 100 shares, if market price is at \$1 and below \$100
- in lots of 50 shares, if market price is at \$100 or above.

For the purpose of this Regulation, a recognized stock exchange means the American Stock Exchange, the Calgary Stock Exchange, the Canadian Stock Exchange, the Montreal Stock Exchange, the New York Stock Exchange, the Toronto Stock Exchange, the Vancouver Stock Exchange and the Winnipeg Stock Exchange.

705. Any amount less than one Trading Unit shall be considered as an odd lot and any dealer who has been requested to call a market has the option to trade an odd lot at the called market (if so requested) or to adjust his market to compensate for the smaller amount involved.

706. Regulations 704 and 705 shall not apply to dealings in the Pacific, Alberta, Mid-Western or Atlantic Districts or to dealings between the said Districts. They shall apply to all dealings in the Ontario and Quebec Districts and to all dealings between the Ontario and/or Quebec Districts and any other District or Districts.

707. Unless otherwise stated at the time of the transaction, all trades are to be considered for regular delivery.

708. When a deal involves the sale of more than one maturity or the purchase of more than one maturity, the deal covering each maturity shall be treated as a separate transaction. No contingent (all or none) dealings are permitted.

709. In trading securities which are dealt in both as actual bonds, debentures, or other forms of securities and as certificates of deposit, and in the absence of an existing ruling making them interchangeable for delivery, delivery shall be made in the form of actual securities unless it is stipulated at the time of the transaction that they are (a) certificates of deposit, or (b) unspecified; in the latter case, either actual securities or certificates of deposit or mixed, shall be good delivery.

DELIVERY

800. All transactions are to be consummated upon the following regular delivery terms unless at the time each individual transaction takes place alternative terms are agreed upon and confirmed in writing:

- (a) In the case of Government of Canada Treasury Bills regular delivery shall be for the next clearing day after the transaction takes place.
- (b) In the case of Government of Canada Bonds and Government of Canada Guaranteed Bonds (except Treasury Bills) having an unexpired term of three years or less to maturity (or to the earliest call date where a transaction is completed at a premium) regular delivery shall involve the stopping of accrued interest on the second clearing day after the transaction takes place.
- (c) In the case of Government of Canada Bonds and Government of Canada Guaranteed Bonds having an unexpired term to maturity of longer than three years (where such a bond is traded at a premium the earliest call date shall be treated as the maturity date) and all provincial, municipal, corporation and other bonds or debentures, stock, or other certificates of indebtedness regular delivery shall involve the stopping of accrued interest, where applicable, on the third clearing day after the transaction takes place.
- (d) Nothing herein contained shall in any way interfere with the common practice of dealing in new issues during the period of original distribution on an "accrued interest to delivery" basis with the exception that regular delivery Regulations will come into effect the appropriate number of clearing days prior to the new issue securities being first available for physical delivery.

Where a new issue delivery is made against payment outside of the points fixed for delivery of the issue, additional accrued interest shall be charged from the delivery date at the delivery point(s) of the new issue, according to the time normally required for delivery to the locality in which the delivery is made. The amount of additional accrued interest to be charged when the nearest delivery point is Toronto or Montreal is as follows:

- (i) For deliveries in the Provinces of Ontario and Quebec, in Metropolitan Winnipeg, in Regina, Saskatoon, Edmonton, Calgary, Fredericton, Saint John and Halifax; additional accrued interest for one day.
- (ii) For deliveries in Vancouver; additional accrued interest for two days.
- (iii) For deliveries in the Provinces of Manitoba (except Metropolitan Winnipeg), Saskatchewan (except Regina and Saskatoon), Alberta (except Edmonton and Calgary), New Brunswick (except Fredericton and Saint John), Nova Scotia (except Halifax), Prince Edward Island and Newfoundland; additional accrued interest for the actual number of days taken for delivery of the bonds to the buyer, but in no event less than two days' additional accrued interest.
- (iv) For deliveries in the Province of British Columbia (except Vancouver); additional accrued interest for the actual number of days taken for delivery of the bonds to the buyer, but in no event less than three days' additional accrued interest.
- (e) Sellers and buyers are both obligated to mail or deliver contracts of confirmation to a transaction each to the other the same day or within a maximum of one working day after a transaction is made;
- (f) Any agreement between dealers to the effect that all future business is to be consummated on terms other than regular delivery shall be considered as an infraction of both the spirit and the letter of these Regulations.

801. All transactions between dealers doing business in different municipalities to be completed on buyers' terms, i.e. delivery to be made free of banking and/or shipping charges to the buyer. Where drafts are drawn to arrive at their destination on other than a clearing day, the seller to have charges paid up to the next clearing day after the expected arrival of such draft. Under no circumstances will drafts be drawn to arrive at their destination, or payment demanded prior to the appropriate clearing day after a transaction takes place.

802. In the case of dealings between dealers in the same municipality, the seller's intention to deliver on a clearing day must be made known to the buyer by telephone prior to 11.30 a.m. and physical delivery must be completed before 3.30 p.m. that day.

Amended 23/9/68 803. For the purpose of this Regulation, good delivery between dealers shall consist of the following, providing it is acceptable to the Transfer Agent.

BONDS/DEBENTURES

With the exception of the initial drawdown of new issues, good delivery shall consist of bearer bonds only, unless the security dealt in is issued solely in registered form.

Interim certificates shall be considered good delivery as long as definitive certificates are not available. Once definitives are available, interims shall not be considered good delivery, unless by mutual agreement.

The following denominations constitute good delivery:

GOVERNMENT OF CANADA BONDS) \$1,000 or \$5,000 or multiples
GOVERNMENT OF CANADA GUARANTEED BONDS) thereof
ALL OTHER BONDS AND DEBENTURES:	\$1,000 and \$500 (or larger pieces where mutually agreeable) provided no more than 10% of the delivery consists of \$500 pieces.

Denominations other than those specified above constitute good delivery only if acceptable to the buyer.

Bonds and/or Debentures that are dealt with only in registered form shall be good delivery if:

1. Registered in the name of an individual, duly endorsed and with endorsement guaranteed by a member in good standing of the Association or a recognized stock exchange, or by a chartered bank or * qualified Canadian trust company.
2. Registered in the name of a Member of the Association or nominee of a Member of the Association and duly endorsed.
3. Registered in the name of a member of a recognized stock exchange and duly endorsed.
4. Registered in the name of a chartered bank or qualified Canadian trust company or the nominee of a chartered bank or qualified Canadian trust company and duly endorsed.
5. In denominations as indicated above duly endorsed or with completed Power of Attorney to transfer attached. (One power of attorney for each certificate in question or an amalgamated power of attorney if acceptable to receiving broker or dealer.)

In all cases, endorsement guarantees acceptable to the relative Registrars and Transfer Agents must be procured by the seller and accompany delivery.

STOCKS

1. Certificates registered in the name of:
 - (a) an individual, endorsed by the registered holder in exactly the same manner as registered and the endorsement guaranteed by a member in good standing of the Association or of a recognized stock exchange or by a chartered bank or qualified Canadian trust company.
 Where the endorsement does not exactly correspond to the registration shown on the face of the certificate, a certification by a member in good standing of the Association or of a recognized stock exchange that the two signatures are those of one and the same person or by a chartered bank or qualified Canadian trust company.
 a member in good standing of the Association or of a recognized stock exchange or a nominee of such member and duly endorsed.
 - (c) a chartered bank or qualified Canadian trust company or the nominee of a chartered bank or qualified Canadian trust company and duly endorsed.
 - (d) any other manner providing it is properly endorsed and the endorsement is guaranteed by a member in good standing of the Association or of a recognized stock exchange or by a chartered bank or qualified Canadian trust company, and
2. Certificates in board lot denominations (or less) as required by the exchange on which the stock is traded. Unlisted stocks should also be in denominations similar to listed stocks in the same category and price range.

BOND, DEBENTURE AND STOCK CERTIFICATES NOT GOOD DELIVERY

- (a) A mutilated or torn certificate or coupon unless acceptable to receiving broker or dealer.
- (b) A certificate registered in the name of a firm or corporation that has made an assignment for the benefit of creditors or has been declared bankrupt.
- (c) A certificate signed by a Trustee or Administrator and accompanied by sufficient evidence of authority to sign.
- (d) A certificate with documents attached other than a registered bond of an issue available in registered form only, with completed Power of Attorney to transfer attached, (one Power of Attorney for each certificate or an amalgamated power of attorney if acceptable to receiving broker or dealer.)
- (e) A certificate which has been altered or erased (other than by the Transfer Agent) whether or not such alteration or erasure has been guaranteed.

- (f) A certificate on which the assignment and/or substitute attorney has been altered or erased.
- (g) A certificate with the next maturing coupon or subsequent coupons detached unless where so traded or where a certified cheque (if for \$1,000 or more) payable to the receiving dealer, dated no later than the date of delivery and for the amount of the coupon(s) missing, attached to the certificate in question.
- (h) A bond or debenture, registered as to principal only, which after being transferred to Bearer, does not bear the stamp and signature of the Trustee.
- (i) A registered bond, debenture or stock unless it bears a certificate that provincial tax has been paid where applicable.
- (j) A certificate that has a stop transfer placed against it, the stop having been placed prior to delivery being made to the receiving dealer or broker.

*A qualified Canadian trust company is a trust company licensed to do business in Canada with a minimum paid up capital and surplus of \$5,000,000.

804. Where dealings take place in bonds and/or debentures, available only in registered form:

- (a) Dealings made from two days prior to a regular interest payment up to three days prior to the closing of the transfer books for the next interest payment, both days inclusive, shall be on an "and interest" basis. Unless delivery is completed to the buyer by twelve o'clock noon at a transfer point on the date of the closing of the transfer books for a regular interest payment, then the full amount of such interest payment shall be deducted by the seller after the calculation of interest on the regular delivery basis;
- (b) Dealings made from two days prior to the closing of the transfer books up to and including three days prior to a regular interest payment shall be less interest from settlement date to the regular interest payment date.

805. Bonds and/or debentures that are dealt in only in registered form shall be good delivery if:

- (a) Registered in the name of a Member.
- (b) Registered in the name of a member of a recognized Canadian stock exchange.
- (c) Registered in the name of the dealer or nominee of the bank with whom the transaction has been consummated.

In all cases, endorsement guarantees acceptable to the relative registrars and transfer agents must be procured by the seller and accompany delivery.

806. Where dealings take place in unlisted registered shares, the shares shall be traded, ex dividend, ex rights, or ex payments two full business days prior to the record date. Where dealings take place in such registered shares, which are not ex dividend, ex rights, or ex payments at the time the transaction occurs, the seller shall be responsible to the buyer for the payment of such dividends or payments, and delivery of such rights, as may be involved, on their due dates, if delivery is not completed prior to twelve o'clock noon at a transfer point on the date of the closing of the transfer books. Should the record date fall on a Saturday or other non-business day, for the purposes of this Regulation it shall be presumed to be effective the business day previous.

807. Where interest on a transaction involves an amount greater than that represented by the half-yearly coupon, interest is to be calculated on the basis of the full amount of the coupon less one or two days, as the case may be.

808. Sales or purchases of securities prior to notice of call in part but not in full and undelivered on date of such notice, shall be completed on the basis of the original transaction. (Date of notice means the date of the notice of call irrespective of the date of publication of such notice.) Called securities do not constitute good delivery unless the transaction is so designated at its inception.

809. Sales or purchases of securities prior to notice of call in full and undelivered at time of such notice shall be completed on the terms of the original transaction.

810. The seller shall, at all times, be required to pay, or certify that payment has been made of, all taxes relative to the transaction, sufficient to enable the buyer to have the securities transferred to his nominee without tax cost to him. This rule shall not apply as to provincial transfer taxes if the buyer, by choice, transfers the securities to a register outside his own Province, if there is a register within his Province.

BUY-INS

900. For the purpose of these Regulations:

- (a) "Chairman" shall refer to the Chairman of the District in which the buyer's office is located.
- (b) A "regular delivery transaction" shall be deemed to have taken place once the dealers involved have agreed on a price.

901. In the case of dealings between dealers in the same municipality should delivery not be advised by 11:30 a.m. on the sixth clearing day after a regular delivery transaction takes place, the buyer may at his option, give written notice to the seller and to the Chairman, on that day, or any subsequent clearing day, prior to 3:30 p.m., of his intention to buy in for cash on the second clearing day after the original notice. Such notice shall automatically renew itself from clearing day to clearing day from 11:30 a.m. until closing until the transaction is finally completed. If the buy-in is not executed on the second clearing day after the original notice, then the seller shall have the privilege of advising the buyer each subsequent day before 11:30 a.m. of his ability, and intention, to make either whole or partial delivery on that day.

902. Where transactions occur between dealers located in different municipalities, should physical delivery not have been received by the buyer at the expiration of six clearing days after the transaction takes place, on or after the sixth clearing day, the buyer may serve the seller with a buy-in by forwarding notice thereof over a public telegraph wire system, such notice to be timed at the sender's point not later than noon to be effective the third clearing day following and also advise the Chairman. If prior to 5 p.m., buyer's time the day following the wired notice, the seller has not advised the buyer by public telegraph wire that the securities covered by the buy-in have passed through his clearing and are in transit to the buyer, then the buyer may on the third clearing day following the wired notice, proceed to execute such buy-in. While such wired buy-ins shall automatically renew themselves from clearing day to clearing day, except with the consent of the buyer, the seller shall forfeit all right to complete delivery of other than such portion of the transaction which is in transit by the day following the receipt of a wired buy-in.

903. Any dealer who is bought in may demand evidence that a bona fide transaction has taken place involving physical delivery, and he shall have the right to deliver such part of his commitment as he is in a position to consummate to the nearest \$1,000 par value, or stock Trading Unit as defined in Regulation 704, coincidental with the execution of the buy-in and as provided for in the preceding paragraphs.

The Chairman or his nominee shall have the authority to postpone the execution of a buy-in from day to day, and to combine buy-ins in the same security and to decide any dispute arising from the execution of the buy-in and his decision shall be final and binding.

904. When a buy-in has been completed the buyer shall submit to the seller a statement of account showing as credits the amount originally contracted for as payment for the securities, and as debits, the amount paid on buy-in, the cost of the buyer's wire and telephone charges relative to the buy-in and any bank or shipping charges incurred. Any credit balance remaining shall be paid to the seller by the buyer, and the seller shall be responsible for payment to the buyer of any remaining debit.

SERVICE CHARGE ON RIGHTS

1000. Whenever a Member renders services to a client in connection with the exercise of rights to subscribe for shares, there shall be charged by the Member and paid by the client, to cover the Member's estimated expenses, an amount equal to one-half the commission that would have been payable if the shares subscribed for had been bought on a recognized stock exchange at the subscription price; provided that such amount shall be reduced by any sum payable by the issuing company to the Member for obtaining the subscription. The Member in his discretion may waive the payment of a service charge by the client if the charge is less than \$5.00.

1001. No part of any amount so paid to the Member by a client or by the issuing company shall be paid by the Member to any other person, firm or corporation resident in Canada other than to salesmen or customers' men in the employ of the Member.

Passed		Effective
23/9/68	1100 — CASH ACCOUNTS	1/12/68

1. Settlement of an individual transaction in a cash account shall be made by a customer by payment or delivery on the settlement date as provided in Regulation 800 unless otherwise provided for as specified in Sections 2, 3 and 4 of this Regulation.

2. Settlement shall be considered provided for where the customer is a Member of the Investment Dealers' Association of Canada or a member of a recognized Stock Exchange as defined.

3. Where delivery cannot be made to the customer on settlement date, settlement shall be considered provided for if:

- (i) the customer is a financial institution as defined and has provided the Member with instructions for delivery;
- (ii) the customer has provided the Member, on or before settlement date, with instructions for delivery or receipt against payment to a Bank, Trust Company or other financial institution;
- (iii) the customer has provided the Member, on or before settlement date, with instructions for delivery or receipt against payment to a Member of the Investment Dealers' Association of Canada or of a recognized Stock Exchange. Written commitment to accept the instructions must be obtained from such Member, who before giving the commitment shall hold, and shall maintain, sufficient funds to margin or pay for securities to be delivered to him, or the securities required for him to make the delivery;
- (iv) the customer has arranged with the Member, on or before settlement date, for payment in full, immediately upon receipt of the securities, in the office of the Member where settlement is to be made.

4. (i) Purchase transactions may be settled by offsetting sales of other securities, where such sales are made on or before settlement date;

(ii) No customer shall be permitted to make a practice of settling a cash account by the sale or repurchase of the same securities, made either before or after settlement date or by sales of other securities made subsequent to settlement date.

(iii) Without affecting the generality of subsection (ii) of this Section the following may be considered acceptable settlement;

(a) an isolated offsetting sale of the same or other securities if made prior to the date on which the security purchased first becomes available for delivery

or

(b) an isolated repurchase of the same security, if made on or before settlement date.

5. Cash account transactions shall be closed out by the sale or purchase of the related securities, whichever action is appropriate unless required margin is provided in full, or an extension of time for settlement has been granted as specified in subsection (iii) of this Section,

- (i) where settlement, or provision for settlement as specified in this Regulation has not been made within 10 calendar days of the settlement date. (For the purpose of this subsection only, instructions or arrangements as specified in subsections (ii), (iii) and (iv) of Section 3, given or made after settlement date may be deemed provision for settlement), or
- (ii) where provision for settlement has been made as specified in Section 3 and payment against delivery has been refused or delayed more than 3 business days after notice has been given that the security is available for delivery.
- (iii) Times specified for settlement in subsections (i) and (ii) may be extended provided that:
 - (a) extension shall only be granted for valid cause, and customers shall not be permitted to make a practice of obtaining extensions;
 - (b) the granting of extensions shall be under the direct supervision of a partner or director who shall authorize all extensions in writing. Such authority may be delegated to other individuals approved by the Association, but responsibility shall reside with the partner or director;
 - (c) authorization for extensions shall be given on or before the date of expiry of the time limits specified, and shall be reviewed weekly; and
 - (d) a record shall be kept of all extensions granted, and the reasons therefor, which shall be kept available for the Association Examiner.

6. Where a cash account transaction has been:

- (i) required to be sold out or bought in as specified in Section 5;
- (ii) converted to a margin account in lieu of full settlement, on any date subsequent to settlement date;
- (iii) covered by sales or repurchases other than as specified in Section 4;
- (iv) settled by delivery or receipt against payment as specified in subsections (ii), (iii) and (iv) of Section 3, but the instructions from the customers have not regularly been provided to the Member on or before settlement date —

then, until any outstanding debit balances have been paid, or margin requirements met, and for a period of 90 days thereafter, any subsequent transactions shall be made subject to advance payment in full, receipt of securities to be sold, or provision of appropriate margin.

7. If settlement is not made as specified in Sections 1, 2 and 3 above, and an extension is granted in accordance with Section 5 (iii), interest must be charged from the settlement date or the date when delivery could first be made, whichever is the later, to date of payment, provided that when the interest would amount to less than \$3.00, it may be waived at the discretion of the Member.

Such interest must be charged at a rate determined from time to time by the National Executive Committee.

CALCULATING PRICE ON A YIELD BASIS

1200. Except as herein provided, where a transaction results from the submission of a bid or offer on a yield basis without stipulation as to price or method of calculating the unexpired term by the buyer or seller at the time the bid or offer is submitted, the price shall be determined as follows:

(a) BONDS HAVING UNEXPIRED TERM UP TO AND INCLUDING 10 YEARS

The unexpired term shall be deemed to be the exact period expressed in years and/or years and months and/or in years, months and days from the

regular delivery date to the maturity of a non-callable bond or a callable bond selling at a price lower than the call price, and to the first redemption date of a callable bond selling at the call price or at a premium over the call price. In calculating the price for the term so determined, one day shall be deemed to be 1/30th of one month.

(b) **BONDS HAVING UNEXPIRED TERM OVER 10 YEARS**

The unexpired term shall be deemed to be the period expressed in years and/or years and months from the month in which the regular delivery date occurs to the month and year of the maturity of a non-callable bond or a callable bond selling at a price lower than the call price, and to the first month and year that the bond is redeemable in the case of a callable bond selling at the call price or at a premium over the call price.

(c) **PRICES**

In all transactions between dealers and investors determined in accordance with the foregoing, the prices shall be extended to two decimal places only. If the third figure after the decimal point is 5 or more the second figure after the decimal point shall be increased by one.

(d) **NEW ISSUES**

This Regulation shall apply to dealing in new issues and the unexpired term shall be deemed to commence on the date to which accrued interest is charged to the investor.

1201. Regulation 1200 shall not apply to transactions in the following securities, all dealings in which shall be subject to negotiation of the dollar price:

- (i) Government of Canada Bonds and Bonds guaranteed by Canada;
- (ii) Short-term securities as noted hereunder:
 - (a) Securities which have an unexpired term of six months or less to maturity;
 - (b) Securities which have an unexpired term of six months or less to the call date and are selling at the call price or at a premium over the call price;
 - (c) Securities which have been called for redemption;
- (iii) Securities callable on future dates at varying prices;
- (iv) Securities callable at the option of the obligant where the call date is not stipulated and the securities are selling at a premium over the call price.

BOND QUOTATIONS

1300. Bond quotations being furnished to the press by any Member must be under the name of the Association.

UNDERWRITING BY MEMBERS' SALESMEN OR OTHER EMPLOYEES

1400. No salesman or other employee of a Member shall participate either directly or indirectly as an underwriter in an underwriting or as an optionee in an option on shares of any company incorporated or operating in Canada, whether such shares are treasury shares or otherwise or acquire directly or indirectly a share interest by reason of being a vendor of properties or other assets sold, or to be sold to any company incorporated or operating in Canada, provided that nothing in this Regulation 1400 shall apply to options on shares of a company, the number of shareholders of which is limited by its charter or other constating document or by the statute under which it is incorporated to not more than fifty (not including employees of such company). This Regulation shall not apply to directors or partners of any Member.

HANDLING OF CLIENTS' FREE CREDIT BALANCES

1401. In Regulation 1402, "free credit balances" has the meaning specified in Regulation 100.

1402. After March 31, 1967 each Member which does not keep its clients' free credit balances in a bank account segregated from the other moneys from time to time received by such Member shall legibly make a notation on all statements of account sent to its clients in substantially the following form:

Any free credit balances represent funds payable on demand which, although properly recorded in our books, are not segregated and may be used in the conduct of our business.

REGULATIONS
of
The District Executive Committees

November, 1968

434/68

MEMBERS WITH HEAD OFFICES IN THE ALBERTA DISTRICT

1500. In addition to filing the annual statements and auditor's report required under By-law 16 and the Regulations of the National Executive Committee, a Member having its principal or head office within the Alberta District shall also file in each year with the District Association Auditors of the Alberta District additional financial statements prepared as of a date six months after the date as of which the last annual statements and auditor's report were required to be filed under the above mentioned Regulations of the National Executive Committee, or as of such other date as may be agreed upon with the said District Association Auditors. Such additional financial statements shall be prepared in the same form as the annual statements required under the above mentioned Regulations of the National Executive Committee (except that none of such statements need be audited) or in such other form as may be agreed upon with the said District Association Auditors. Such additional financial statements shall be filed within five weeks of the date as of which such statements are prepared as aforesaid, subject to such extension of time, if any, as the said District Association Auditors may in their discretion grant when requested in writing by the Member or by the Member's Auditor. Such Member may not change to another date without the written permission of the said District Association Auditors.

MEMBERS WITH HEAD OFFICES OUTSIDE THE ALBERTA DISTRICT

1501. A Member having its principal or head office outside the Alberta District but having a branch office or offices within the Alberta District shall file annually with the District Association Auditors of the Alberta District (or cause to be so filed) a certificate of the Association Auditors of the District in which such Member has its principal or head office that at the date of such certificate such Member is not in default in filing the annual statements and auditor's report required under By-law 16 and the Regulations of the National Executive Committee and such additional financial statements, if any, as may be required under Regulations, if any, made by the District Executive Committee of the District in which such Member has its principal or head office.

**MEMBERS WITH HEAD OFFICES OUTSIDE
THE ATLANTIC DISTRICT**

1600. A Member having its principal or head office outside the Atlantic District but having a branch office or offices within the Atlantic District shall file annually with the District Association Auditors of the Atlantic District (or cause to be so filed) a certificate of the Association Auditors of the District in which such Member has its principal or head office that at the date of such certificate such Member is not in default in filing the annual statements and auditor's report required under By-law 16 and the Regulations of the National Executive Committee and such additional financial statements, if any, as may be required under Regulations, if any, made by the District Executive Committee of the District in which such Member has its principal or head office.

**MEMBERS WITH HEAD OFFICES OUTSIDE
THE MID-WESTERN DISTRICT**

1700. A Member having its principal or head office outside the Mid-Western District but having a branch office or offices within the Mid-Western District shall file annually with the District Association Auditors of the Mid-Western District (or cause to be so filed) a certificate of the Association Auditors of the District in which such Member has its principal or head office that at the date of such certificate such Member is not in default in filing the annual statements and auditor's report required under By-law 16 and the Regulations of the National Executive Committee and such additional financial statements, if any, as may be required under Regulations, if any, made by the District Executive Committee of the District in which such Member has its principal or head office.

MEMBERS WITH HEAD OFFICES IN THE ONTARIO DISTRICT

1800. In addition to filing the annual statements and auditor's report required under By-law 16 and the Regulations of the National Executive Committee, a Member having its principal or head office within the Ontario District shall also file in each year with the District Association Auditors of the Ontario District additional financial statements prepared as of a date not earlier than five months and not later than eight months after the date as of which the last annual statements and auditor's report were required to be filed under the above mentioned Regulations of the National Executive Committee, or as of such other date as may be agreed upon with the said District Association Auditors. Such additional financial statements shall be prepared in the same form as the annual statements required under the above mentioned Regulations of the National Executive Committee (except that none of such statements need be audited) or in such other form as may be agreed upon with the said District Association Auditors. Such additional financial statements shall be filed within five weeks of the date as of which such statements are prepared as aforesaid, subject to such extension of time, if any, as the said District Association Auditors may in their discretion grant when requested in writing by the Member or by the Member's Auditor. Such Member shall notify the said District Association Auditors the date the Member wishes to use for these additional financial statements and may not change to another date without the permission of the said District Association Auditors.

MEMBERS WITH HEAD OFFICES OUTSIDE THE ONTARIO DISTRICT

1801. A Member having its principal or head office outside the Ontario District but having a branch office or offices within the Ontario District shall file annually with the District Association Auditors of the Ontario District (or cause to be so filed) a certificate of the Association Auditors of the District in which such Member has its principal or head office that at the date of such certificate such Member is not in default in filing the annual statements and auditor's report required under By-law 16 and the Regulations of the National Executive Committee and such additional financial statements, if any, as may be required under Regulations, if any, made by the District Executive Committee of the District in which such Member has its principal or head office.

**MEMBERS WITH HEAD OFFICES OUTSIDE
THE QUEBEC DISTRICT**

1900. A Member having its principal or head office outside the Quebec District but having a branch office or offices within the Quebec District shall file annually with the District Association Auditors of the Quebec District (or cause to be so filed) a certificate of the Association Auditors of the District in which such Member has its principal or head office that at the date of such certificate such Member is not in default in filing the annual statements and auditor's report required under By-Law 16 and the Regulations of the National Executive Committee and such additional financial statements, if any, as may be required under Regulations, if any, made by the District Executive Committee of the District in which such Member has its principal or head office.

MEMBERS WITH HEAD OFFICES IN THE PACIFIC DISTRICT

2000. In addition to filing the annual statements and auditor's report required under By-law 16 and the Regulations of the National Executive Committee, a Member having its principal or head office within the Pacific District shall also file in each year with the District Association Auditors of the Pacific District additional financial statements prepared as of a date not earlier than five months and not later than eight months after the date as of which the last annual statements and auditor's report were required to be filed under the above mentioned Regulations of the National Executive Committee, or as of such other date as may be agreed upon with the said District Association Auditors. Such additional financial statements shall be prepared in the same form as the annual statements required under the above mentioned Regulations of the National Executive Committee (except that none of such statements need be audited) or in such other form as may be agreed upon with the said District Association Auditors. Such additional financial statements shall be filed within five weeks of the date as of which such statements are prepared as aforesaid, subject to such extension of time, if any, as the said District Association Auditors may in their discretion grant when requested in writing by the Member or by the Member's Auditor. Such Member shall notify the said District Association Auditors the date the Member wishes to use for these additional financial statements and may not change to another date without the permission of the said District Association Auditors.

MEMBERS WITH HEAD OFFICES OUTSIDE THE PACIFIC DISTRICT

2001. A Member having its principal or head office outside the Pacific District but having a branch office or offices within the Pacific District shall file annually with the District Association Auditors of the Pacific District (or cause to be so filed) a certificate of the Association Auditors of the District in which such Member has its principal or head office that at the date of such certificate such Member is not in default in filing the annual statements and auditor's report required under By-law 16 and the Regulations of the National Executive Committee and such additional financial statements, if any, as may be required under Regulations, if any, made by the District Executive Committee of the District in which such Member has its principal or head office.



First Session—Twenty-eighth Parliament
1968-69

THE SENATE OF CANADA

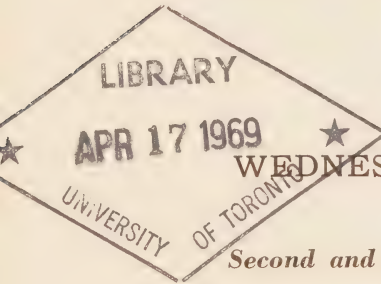
PROCEEDINGS

OF THE
STANDING SENATE COMMITTEE
ON

BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 25



WEDNESDAY, MARCH 12th, 1969

Second and Final Proceedings on Bill S-29,

intituled:

“An Act respecting the production and conservation of oil and gas in
the Yukon Territory and the Northwest Territories”.

WITNESSES:

Department of Indian Affairs and Northern Development: A. D. Hunt,
Director, Resource and Economic Development Group; Dr. W. W.
Woodward, Chief, Oil and Mineral Division, Resource and Economic
Development Group.

REPORT OF THE COMMITTEE

The Queen's Printer, Ottawa, 1969

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Lang
Aseltine	Desruisseaux	Leonard
Beaubien (<i>Bedford</i>)	Gelinas	Macnaughton
Benidickson	Giguère	Molson
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Inman	Welch
Connolly (<i>Ottawa West</i>)	Isnor	White
Cook	Kinley	Willis—(30)

ex officio members: Flynn and Martin
(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, February 27th, 1969:

“Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Everett, seconded by the Honourable Senator Sparrow, for the second reading of the Bill S-29, intituled: An Act respecting the production and conservation of oil and gas in the Yukon Territory and the Northwest Territories”.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Langlois moved, seconded by the Honourable Senator McDonald, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.”

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, March 12th, 1969.
(27)

At 10.20 a.m. this day the Standing Senate Committee on Banking, Trade and Commerce met to *resume* consideration of Bill S-29, "An Act respecting the production and conservation of oil and gas in the Yukon Territory and the Northwest Territories".

Present: The Honourable Senators Hayden (*Chairman*), Beaubien, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Inman, Isnor, Kinley, Lang, Macnaughton and Thorvaldson. (14)

Present, but not of the Committee: The Honourable Senators Grosart, Hays, McLean, Phillips (*Rigaud*) and Prowse. (5)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The following witnesses were heard:

Department of Indian Affairs and Northern Development:

A. D. Hunt, Director, Resources and Economic Development Group.
Dr. H. W. Woodward, Chief, Oil and Mineral Division, Development Group.

Amendments:

Clauses 12, 13, 21, 25, 26, 27, 40 and 41, inclusive, were amended.

NOTE: The full text of the amendments appears by reference to the Report of the Committee immediately following these Minutes.

Upon motion, it was *Resolved* to report the said Bill as amended.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, March 12th, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill S-29, intituled: "An Act respecting the production and conservation of oil and gas in the Yukon Territory and the Northwest Territories", has in obedience to the order of reference of February 27th, 1969, examined the said Bill and now reports the same with the following amendments:

1. *Page 6:* Strike out lines 36 to 41, both inclusive, and substitute therefor the following:

"12. The Governor in Council may make regulations respecting the exploration and drilling for and the production and conservation, processing and transportation of oil and gas and, in particular, but without restricting the generality of the foregoing, may make regulations".

2. *Page 9:* Strike out lines 14 to 21, both inclusive, and substitute therefor the following:

"(b) the locating, spacing or drilling of a well within a field or pool or within part of a field or pool or the operating of any well that, having regard to sound engineering and economic principles, results or tends to result in a reduction in the quantity of oil or gas ultimately recoverable from a pool;"

3. *Page 15, line 1:* Strike out "two" and substitute therefor "one".

4. *Page 19:* Strike out clause 25 and substitute therefor the following:

"25. (1) No person shall produce any oil or gas within a spacing unit in which there are two or more leases or two or more separately owned working interests unless a pooling agreement has been entered into in accordance with section 21 or in accordance with a pooling order made under section 22.

(2) Subsection (1) does not prohibit the production of oil for testing in any quantities approved by the Chief Conservation Officer."

5. *Page 19, line 14:* Strike out "two" and substitute therefor "one".

6. *Page 20:* Strike out clause 27 and substitute therefor the following:

"27. (1) Notwithstanding anything in this Act, where, in the opinion of the Chief Conservation Officer, the unit operation of a pool or part thereof would prevent waste, he may apply to the Committee for an order requiring the working interest owners in the pool or part thereof to enter into a unit agreement and a unit operating agreement in respect of the pool or part thereof, as the case may be.

(2) Where an application is made by the Chief Conservation Officer pursuant to subsection (1), the Committee shall hold a hearing at which all interested persons shall be afforded an opportunity to be heard.

(3) If, after the hearing mentioned in subsection (2), the Committee is of opinion that unit operation of a pool or part thereof would prevent waste, the Committee may by order require the working interest owners in the pool or part thereof to enter into a unit agreement and a unit operating agreement in respect of the pool or part thereof.

(4) If in the time specified in the order referred to in subsection (3), being not less than six months from the date of the making of the order, the working interest owners and royalty owners fail to enter into a unit agreement and a unit operating agreement approved by the Committee, all drilling and producing operations within the pool or part thereof in respect of which the order was given shall cease until such time as a unit agreement and a unit operating agreement have been approved by the Committee and filed with the Chief Conservation Officer.

(5) Notwithstanding subsection (4), the Committee may permit the continued operation of the pool or part thereof after the time specified in the order referred to in subsection (3) if it is of opinion that a unit agreement and unit operating agreement are in the course of being entered into, but any such continuation of operations shall be subject to any conditions prescribed by the Committee.”.

7. *Page 28:* Strike out lines 21 and 22 and substitute therefor the following:
“and, subject to section 41, is binding upon the Committee and upon all parties.”.

8. *Page 29:* Immediately after line 2, add as new subclause (5) of clause 41, the following:

“(5) Any order made by the Committee pursuant to subsection (4), unless such order has already been dealt with by the Governor in Council pursuant to section 40, shall be subject to that section.”.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE STANDING SENATE
COMMITTEE ON BANKING, TRADE AND COMMERCE
EVIDENCE

Ottawa, Wednesday, March 12, 1969

The Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-29, respecting Yukon and N.W.T. Gas and Oil Conservation and Production Act, met this day at 10.30 a.m. to give further consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have with us from the Department of Indian Affairs and Northern Development Mr. A. D. Hunt, Director of Resource and Economic Development Group, and Dr. H. W. Woodward, Oil and Gas Administrator.

You may remember that last week when we were considering this bill we heard from the representatives of the Canadian Petroleum Association. Mr. Lewis was the spokesman at that time. Generally, they expressed agreement and said that this particular kind of legislation was needed immediately for the Yukon and the Northwest Territories. They raised some point where they suggested there should be amendments to clarify the intent of the bill.

Following on that, we met with the departmental officers who were charged with the administration of this act when it comes into force and we also had the benefit of the opinion of the director of legislation in the Department of Justice.

Arising out of that, we have agreed on a number of amendments which are in line with what Mr. Lewis suggested and which are approved of by the department. There may be one or two additional points which I raised the other day, but we will come to those after we consider the present ones.

Mr. Hunt, we did not have the benefit of any expression of views, on the last occasion, from your department. We had several silent observers. Would you care to give some explanation of the purposes of this bill?

Mr. A. D. Hunt, Director, Resource and Economic Development Group, Department of Indian Affairs and Northern Development: Thank you, Mr. Chairman. Honourable senators, this bill if I might classify it, is a reasonably standard approach to the orderly control and administration of oil and gas production. The concepts and the ideas behind it really rest on many years of experience gained on this continent and particularly in the western provinces.

I think it is fair to categorize it—as I believe the representatives of the Canadian Petroleum Association did when they made their presentation—as in accord with the general principles which have been in practice in western Canada for a long time.

The bill seeks, first of all, to ensure that oil and gas in the Yukon and the Northwest Territories is produced under controlled conditions so that, in the first place, there will be no unreasonable or very little waste and so that the normal concepts and principles of conservation can be followed.

In the Yukon and the Northwest Territories at the moment we have the ever-increasing exploratory effort in the oil and gas industry. Starting perhaps in the late 1950s and early 1960s, we have increased exploration holdings—which I think is a fair indicator of the industry activity—from around in those days 50 million acres, which was even then quite a large amount, to the figure at which we are standing now in the Yukon and Northwest Territories of 250 million acres under permit for oil and gas exploration.

Expenditures, likewise, have increased tremendously. In the middle 1950s something like \$4 to \$5 million annually was being expended by the industry in searching for oil and gas. This year we fairly confidently predict that that will be \$35 to \$40 million and probably in a few years from now that will exceed \$50 million.

To give you some yardstick, the expenditures in Alberta on exploration, not on development or production facilities or processing facilities, but on exploration alone, is around \$100 million a year. So the potential in the north is being recognized.

Furthermore, we have one or two discoveries, some of which we hope will be going into production very shortly. Those I refer to particularly are two gas fields—one in the Northwest Territories and one in the Yukon Territory, in that area just north of the British Columbia boundary. Those gas fields, Pointed Mountain and Beaver River, we expect to be tied into pipeline next year or the year after.

Senator Isnor: Are they Canadian companies?

Mr. Hunt: The Pointed Mountain gas field rights are held by Pan-American Petroleum Corporation. That is not a Canadian company, it is a United States company operating in Canada through a branch operation, at this point in time.

Senator Isnor: What about the other?

Mr. Hunt: It is the same company for both fields. The pipeline company for this will be Canadian and the Pan-American Petroleum Corporation have signed an agreement with West Coast Transmission Company Limited to take the gas and deliver it either to Vancouver or to the Pacific northwest, in accordance with export approvals.

That is a background of the activities in the north. I think I should refer—although it has already been done through discussion in the Senate—to the large Prudhoe Bay discovery on the North Slope of Alaska. This apparently is a very large field. I hesitate to put any numbers on it, because I have not heard any official size, but I think we are only just beginning to appreciate the significance of this field.

To Canada it also has a tremendous significance, because the geology of the Mackenzie Delta area and the western Arctic islands is very similar. Therefore, we hope very much that there is a chance that similar sized fields may be in that region.

Senator Thorvaldson: In comparison with that field, is it fair to note this whole field as being owned by one company?

The Chairman: You mean Pan-American?

Mr. Hunt: This is going back to the gas field?

Senator Thorvaldson: No. I am referring to the one you spoke of, north of the British Columbia boundary. I am wondering if there are other interests there as well as the American company, or whether the American company has the whole field, in so far as it is delineated now.

Dr. H. W. Woodward, Oil and Gas Administrator, Department of Indian Affairs and Northern Development: In that case, the Pan-American Company has the dominant acreage position. Texaco (Canada), the Chevron-Standard Petroleum Company, and other companies, have also some contiguous acreage, which may also be approved for production. At the moment there is one well being drilled north from the British Columbia extension, which is the Pan-American company acreage, but there is contiguous acreage held by competitor companies, which may also be approved for production.

Senator Thorvaldson: But they are not defined there yet?

Mr. Hunt: That is right. Neither the Beaver River nor the Pointed Mountain fields have yet been fully delineated. It might be helpful to give a brief background of the tremendous upsurge in exploration activity and therefore what we would anticipate in production in the relatively near future.

The bill is divided into several parts. I think I might go through the bill briefly, not by section but just referring to the various parts and to the concepts in the bill. In the first place the bill would seek to authorize the Governor in Council to make regulations providing for the orderly administration and control of the myriad of production activities that go on in an oil or gas field; such things as measurement of oil or gas, control of rates of production, and the control and inspection of the equipment to be used—in other words, I would suggest, primarily housekeeping aspects of the administration.

The bill then goes on to the conservation aspect, which in this case is achieved by defining waste and, of course, prohibiting waste. Waste is not thought of simply in the physical sense of spilling oil and gas on the ground. What is thought of as much more important is the failure to take the necessary steps to recover from the underground reservoir the optimum amount of oil and gas consistent with reasonable economics. Of course, one literally could drill one well for every

few acres and perhaps recover almost all of the oil that is underground. It is, however, physically impossible to recover all the oil. On the other hand, it is very easy to dissipate the reservoir energy so that much of the oil is left behind. In the old days, not in Canada so much as elsewhere, some fields were produced as fast as they could be. This produced an awful lot of oil in a hurry, but often it left 85 per cent of the oil behind.

Senator Thorvaldson: Mr. Chairman, I wonder if we could know whether the present witness is a geological engineer or an engineer or an administrative officer of the department.

Mr. Hunt: I try to combine several talents, sir. My background is economic geology. For a number of years I was in the oil industry and I was there as a geologist. I was also with my own firm of petroleum consultants, and I have been with the department now for approximately ten years in administration primarily.

Senator Thorvaldson: Thank you. I take it your experience in the field has been in western Canada, has it?

Mr. Hunt: Yes, and in South America as well; both.

So great care was taken to define what we meant by waste and to make sure that we would conserve the oil and gas from the point of view of not leaving it behind in the ground.

The next part of the bill concerns pooling and unitization. Pooling is simply a requirement with respect to where a spacing unit is established, and this would be done under the administrative regulations. A spacing unit indicates that one well may be drilled within so many acres. It is usually a square. The size of the square is determined by engineers who look at the reservoir characteristics and try—of course, it is not absolute—try to work out how many wells are required to adequately drain the oil or gas pool.

Am I going into too much detail, Mr. Chairman?

The Chairman: No, you are not. If you were, you would be hearing something.

Mr. Hunt: All right. What may happen, say, in a gas field where you have a fairly large spacing unit, is that more than one company or individual may own or have a lease

within that unit. You can only drill one well in the unit so the bill provides for the pooling of the lands within that unit, either voluntarily or, failing that, compulsorily in order that drilling may proceed.

Pooling, therefore, refers simply and only to one spacing unit, and the compulsory aspect, I would emphasize, is well established throughout western Canada.

Secondly, we have unitization. Unitization is a fairly modern concept in oil and gas production. What it says is that, ideally, it is best to produce an oil and gas field as if it were owned by only one organization, one company, one individual or what have you. So that in developing the field you locate wells in the optimum position, consistent with whatever the characteristics of the reservoir are, and you will produce all the oil or gas through, shall we say, a few wells in the optimum position and you will not, of course, overdrill and invest unnecessarily in productive capacity.

The Chairman: I suppose you might say, Mr. Hunt, that unitization is quite common in various countries in the world. It is simply a question of the objective being to get the optimum production at the lowest cost.

Mr. Hunt: That is right. It is an economic aspect. It is of tremendous importance in the north, of course, because we feel that the markets for northern oil are going to be some distance away. I will not hazard a guess at where they may be, but we do feel that they may not be simply continental markets. The moment we start looking for markets outside the North American continent, we have to be competitive with the much lower cost Middle East oil or North African oil. So we are trying to ensure that there will be no overproductive capacity and that companies will be encouraged to employ the latest approach to the development of a field on a unit basis.

Senator Desruisseaux: Mr. Chairman, are we talking only about the fields on the land or are we talking also about fields under water?

The Chairman: We are talking only about the Yukon and Northwest Territories. We are not talking about off-shore fields.

Senator Desruisseaux: We are not talking about the off-shore fields at all?

Mr. Hunt: No. This bill will apply to the Yukon and Northwest Territories, and I

understand their boundaries are the shore line.

Senator Prowse: Just to clarify this point, my understanding is that we consider the rather narrow waters and off-shore waters, which would include the Continental Shelf which attaches to the Northwest Territories, as part of the Northwest Territories. Is that not so?

Mr. Hunt: If I might put it this way, sir, the waters immediately surrounding the shores of the Northwest and Yukon Territories, for at least three miles out anyhow, would be considered as part of the territorial waters and therefore part of Canada.

Senator Prowse: What I had in mind was some of the maps I had seen which have come from your department, as, for example, in the Pan-Arctic pamphlet. That particular map would indicate that very largely the interesting-looking areas, interesting on the basis of now available information, are under permit at the present time. My recollection is that some of those permits went out into fairly deep water and got a fair distance from the shore. Now, this would cover any of those things that you have under permit or that you would put under permit. Would that not be so?

Mr. Hunt: No, sir. Not at this time.

Senator Prowse: Then who looks after them?

Mr. Hunt: There are in force regulations that provide for controlling simply just the drilling of all areas. These regulations were promulgated under the Territorial Lands Act and are generally considered adequate to meet the situation as it exists off-shore at the moment, because in the Arctic, in the Beaufort Sea or interisland channels—I believe that is what you had in mind.

Senator Prowse: I have a picture in mind, but I do not remember the names.

Mr. Hunt: It is off the Mackenzie Delta.

Senator Prowse: And west of the islands, too.

Mr. Hunt: Correct. Just for your information there are approximately 250 million acres of permits on the land within the Yukon and Northwest Territories, and approximately 130 million acres in the Arctic Sea and Arctic island channels.

Senator Prowse: Those 130 million acres, are they not to be subject to this legislation?

Mr. Hunt: Not at this time, no.

Senator Prowse: It is anticipated that they will become so?

The Chairman: That is a question of policy, senator.

Senator Thorvaldson: I understood the witness to say there were regulations covering exploration on the continental shelf. Under what act do they come?

Mr. Hunt: They have been promulgated under the Territorial Lands Act and the Public Lands Grants Act. They do not provide for unitization and do not provide for waste. They are simple regulatory acts providing for the control of drilling. They specify the type of blow out prevention and the amount of surface casing that must be provided. They do not contain these more elaborate matters of inspection and unitization and conservation.

The Chairman: In other words, the area covered by this bill is an area that has reached the stage, or appears to have reached the stage where these problems of unitization, pooling and waste should be immediately dealt with.

Mr. Hunt: Yes, because we have proven that there are gas reserves and some oil in the northern Yukon. It is a little too far from the market at the moment, and there has been extensive drilling. Now we have heard of more wells coming in the Mackenzie Delta and as I indicated this area has a geological similarity to the area of Prudhoe Bay.

Senator Prowse: How about the Norman Wells area. Are you in secondary recovery there?

Mr. Hunt: Yes, in the Norman Wells area the Government of Canada has a direct carrier interest in that field and so we have been able to achieve what we wanted from the point of view of unitization and secondly to assist in the recovery without this bill. Imperial Oil have been most co-operative in this way.

Senator Prowse: There you exercise rights as an owner rather than as a government.

Mr. Hunt: Imperial Oil have led the way and have done everything they could to make the field produce to the optimum. This was an example of where one owner owned it completely rather than having several owners.

Senator Prowse: And of course the large companies have a tendency to take a longer term view.

Mr. Hunt: You mean in the sense of acting now with a view to the future, that is right.

Senator Prowse: So they owned it all?

Mr. Hunt: Now there are three other aspects to the act, two of which I can deal with very quickly. The first is the provision for the administration and the appointment of inspectors, engineers and so on. The other provision deals with the appeal provisions which have been looked at, I would suggest, very carefully. They are very similar in many respects to appeal provisions found in the National Energy Board Act and in the Railways Act. It finally provides for a review of administrative decisions and provides for means whereby the facts of these very complicated production situations may be determined. The bill provides for the appointment of a committee of five members all of whom are expected to have some knowledge and experience of the oil and gas industry. This committee would have quasi-judicial powers. It would not be an independent board so that it would be responsive to policy requirements, but it would have a certain degree of independence to issue orders and reach conclusions.

I think those are the main parts of the act, Mr. Chairman, and if there are any questions I would be happy to try to answer them.

The Chairman: Are there any questions? Otherwise I was going to deal with the amendments proposed.

Senator Carter: I have a question with regard to this 130 million acres. Is that a potential oil-bearing area or is that the area mapped?

Mr. Hunt: That is the area under oil and gas exploration permit. The potential area is probably somewhat larger than that. But as has already been observed some permits have been acquired by companies a very long way off shore in very deep water which is covered, I think, all the year round by ice and the technological problems of drilling in these areas have yet to be faced. We do not know yet how the companies are going to achieve it, but we are delighted they are going to attempt it. But there is a long way to go before we can see any drilling done.

Senator Prowse: I have one or two questions. First of all with regard to the constitution of the committee itself it says "which shall consist of five members, not more than three of whom shall be employees in the public service of Canada." Then it says that they are limited to three-year terms. Is it the intention that the members of this committee will be full-time employees or is it anticipated that for some time to come their duties will be of such a limited nature that it will not be practicable to put full-time people in there?

Mr. Hunt: It is anticipated, I believe, that initially it would not be a full-time job, and the committee would be called upon to meet probably just a very few times a year. There probably would be a full-time secretary appointed to ensure continuity but other than that the committee would meet from time to time as required. We would anticipate in view of the good prospects in oil and gas that it would pay off eventually and that it would become a full time committee, but it is difficult to say how long it will be before this takes place.

Senator Lang: Are there any reasons other than those of policy why the jurisdiction of that committee was not entrusted to the National Energy Board?

Mr. Hunt: Well, it is almost entirely a matter of policy considerations. If I might mention one thing, the National Energy Board will in future, we hope, be called upon to deal with matters of pipelines and so on. But on the question of all policy matters, there might be a little difficulty involved if they were at the same time administrators of oil from the north. The provinces might wonder whether they were too much involved in northern matters.

Senator Thorvaldson: I have a supplementary to that question. I take it the National Energy Board at the present time has no jurisdiction whatever in regard to the subject matter of this bill.

Mr. Hunt: That is correct, sir. The National Energy Board at a certain time might have jurisdiction over pipelines connecting into the Yukon and Northwest Territories, but it has no administrative jurisdiction over the oil and gas within the territory.

Senator Prowse: Then this would be the equivalent of a provincial conservation board which has authority within the area, but in

this case once the oil leaves the area, unlike the provincial board, the matter comes under the Energy Board. Would that be a suitable analogy?

Mr. Hunt: Yes, that is a good analogy, sir, and I might draw your attention to the fact that the committee, as proposed here, is, shall we say, a little bit of a compromise between what we find in Alberta, where it is a separate body from the Department of Mines that grants or administers the granting of the oil and gas rights, and, shall we say, the situation in Saskatchewan where their committee is indistinguishable from the Department of Mines.

Senator Prowse: That is what you would consider as a practical balance?

Mr. Hunt: Yes.

Senator Prowse: When we get to section 6, it provides a limitation on the interest any members of the committee should have, and it says:

No member of the Committee shall have a pecuniary interest of any description, directly or indirectly, in any property in oil or gas to which this Act applies or own shares in any company engaged in any phase of the oil or gas industry in Canada in an amount in excess of five per cent of the issued shares thereof.

This would not preclude a person from being a major shareholder in a gas or oil company in, say, the Middle East, in which he might be in conflict. I am wondering whether it is contemplated that there should not be an interest and that the person should divest himself of any interest in the business in which he is being a judge and in which a conflict might unintentionally arise. I say that not because I think you are going to get crooks in there, but I think of the application of the principle that they should be above suspicion, and that even the most warped mind should not be able to assume they are influenced by anything except their job.

The Chairman: Senator, you are suggesting quite a qualification . .

Senator Prowse: Yes, I am.

The Chairman: . . for a job of this kind.

Senator Prowse: Well, it is not an unusual requirement for people to have to divest themselves of certain interests or to change the interests they have.

The Chairman: I am talking about the scope of this position as a member of the committee.

Senator Prowse: I think it is something that eventually we are going to have to deal with, perhaps by way of amendment. I do not know that it is that important as of this minute, but I am not sure we should not deal with the principle now.

The Chairman: You mentioned that somebody might be appointed a member who had some interest in a Middle East oil company. Under this bill you have pooling, unitization, and all these other things, all in the interests of getting the oil and gas to market at the lowest possible price, in order to be competitive elsewhere.

Senator Prowse: It has some purpose beyond that.

The Chairman: But I think that this is an essential purpose of the bill, because there is no use developing this processing and shipping in pipelines, and everything else, to get it out of Canada, if you are not going to get it out on a competitive basis.

Senator Prowse: What has that to do with the qualifications of the people on the committee?

The Chairman: I am trying to think of where the question of conflict of interest could possibly arise.

Senator Prowse: Let us say that somebody is on the board and he decides he has an interest where we are considering going into the market, where they could be in conflict with the company in which he can have up to 5 per cent interest, which could give him, with a couple of other people, complete control in a very large company . .

The Chairman: Oh, no.

Senator Prowse: Oh, yes.

The Chairman: He could declare his interest.

Senator Macnaughton: It is certainly very interesting what our learned friend has put forward, but surely the members of this committee are called upon to consider this bill, and that is our outside limit as of this moment. There are other places and other ways of raising the other questions, but it comes very close to policy.

The Chairman: That is right. I think it was pertinent to raise the question of qualification, but I do not think it is a matter of any moment right now. This is laying a foundation dealing with the growth and development of this industry in Canada. If it gets to a stage where this aspect becomes important, I am sure you will either have regulation or amendments to the bill.

Are you ready to have a look at the amendments proposed, because then you may want to raise some more questions.

May I indicate to you the first amendment which was proposed by the Petroleum Association, to be found at the bottom of page 6 of the bill?

The association suggested that the regulatory power should include processing and transportation. That has been agreed to and, therefore, the amendment proposed is that we insert after the word "conservation", in line 39 on page 6 of the bill, section 12, the words "processing and transportation". Is that agreed?

Senator Thorvaldson: May I just express an opinion? If you include those words, will that not make it necessary to make amendments to the bill elsewhere, or is the bill otherwise unaffected?

The Chairman: Adding those words does not in any way affect anything else that occurs elsewhere in the bill.

Hon. Senators: Agreed.

The Chairman: Then on page 9, that is the next one, in section 13(2)(b), you will notice the language there is, "the locating, spacing or drilling". There is an amendment suggested to that, and I will just read the amendment:

the locating, spacing or drilling of a well within a field or pool or within part of a field or pool or the operating of any well that having regard to sound engineering and economic principles results or tends to result in a reduction in the quantity of oil or gas ultimately recoverable from a pool;

What is the significance of this change, Mr. Hunt?

Mr. Hunt: As I understand it, it was simply suggested by the Canadian Petroleum Association in order to make the reading of that particular paragraph a little more easy. All it does is take out the words "that results

or tends to result" in the original draft and move them towards the end of the paragraph, rather than having them in the middle.

The Chairman: It simplifies it.

Senator Prowse: Instead of the word "under", which might be a little hard to define.

The Chairman: Is the amendment agreed, that section 13(2)(b) be struck out and the new paragraph (b), as I have read it, be inserted?

Hon. Senators: Agreed.

The Chairman: The next one occurs in section 21 of the bill. This is on page 15, under "Pooling", and the Petroleum Association had suggested that the word "two" be struck out and that it should be "one".

Senator Burchill: What line is that?

The Chairman: That is the first line of subsection 1 of section 21, on page 15. What is the intent of that, Mr. Hunt?

Mr. Hunt: It makes more sense. The association pointed out that for pooling actually there might be a strange case where one company held interests in a spacing unit that it had acquired from different parties, and its royalty obligations might be different in different parts of the spacing unit and, therefore, the company might, as it were, want to pool with itself. So, this is simply to take care of that rather strange situation that might develop.

The Chairman: The next amendment is at page 19 of the bill, section 26. The first change is again a change of the word "two" in subsection (1) of section 26 to "one", so that the first words of section 26(1) will be: "Any one or more working interests..."

Shall this amendment carry?

Hon. Senators: Carried.

The Chairman: That is section 26, but I should have pointed out first that it is proposed that we call the existing section 25, subsection (1) and that we insert a subsection (2) which reads as follows:

Subsection (1) does not prohibit the production of oil for testing in any quantities provided by the Chief Conservation Officer.

This is a matter that was suggested by the Canadian Petroleum Association, which the department viewed favourably. Have you any comment, Mr. Hunt?

Mr. Hunt: Only to say that we accepted that it might be possible that a well had been drilled that discovered oil, and following that a spacing unit might be promulgated, and that the company, having drilled the well, would like to test it. Section 25 would have prohibited that unless the spacing unit had been pooled. There seemed to be no objection to a controlled amount of oil being produced for test purposes.

The Chairman: Section 27, which is to be found at the top of page 20 of the bill, is a section that the Canadian Petroleum Association raised some questions about when they were here at our last meeting. The substance of what they said was this:

The minister, under section 27 may require unitization for the purpose of preventing waste. The Association believes that this section is not necessary inasmuch as the Committee, under sections 17 and 18, has the right to call hearings and issue orders which will prohibit waste. These sections also provide for the right of appeal.

Section 27, in its present form, does not provide for either a hearing on the matter of ordering unitization nor does it provide for an appeal. Should section 27 remain in the bill, we submit it should be redrafted to provide for both a hearing and an appeal.

The department, in our discussions with them accepted that point of view, namely, that section 27 should remain in the bill but that it should be redrafted in order to provide for the hearing and the appeal. We have been presented this morning with a draft of the new section 27 which incorporates those features. This has been prepared, presumably, by the Department and the law officers of the Crown. It is quite lengthy but, as can be seen from the bill, section 27 as it is is also quite lengthy. The chief purpose of this amended section 27 is to provide for those two additional features. Is not that right, Mr. Hunt?

Mr. Hunt: Yes.

The Chairman: That is, it provides for a hearing in connection with unitization, and also a right of appeal. Otherwise, the substance is in line with the substance of the existing section 27. Shall I read the proposed amendment?

Senator Connolly (Ottawa West): It can be taken as read. Everybody has a copy of it?

The Chairman: Yes.

[The chairman then placed on the record a proposed amendment to section 27 of the bill, as follows:]

27. (1) Notwithstanding anything in this Act, where, in the opinion of the Chief Conservation Officer, the unit operation of a pool or part thereof would prevent waste, he may apply to the Committee for an order requiring the working interest owners in the pool or part thereof to enter into a unit agreement and a unit operating agreement in respect of the pool or part thereof, as the case may be.

(2) Where an application is made by the Chief Conservation Officer pursuant to subsection (1), the Committee shall hold a hearing at which all interested persons shall be afforded an opportunity to be heard.

(3) If, after the hearing mentioned in subsection (2), the Committee is of opinion that unit operation of a pool or part thereof would prevent waste, the Committee may by order require the working interest owners in the pool or part thereof to enter into a unit agreement and a unit operating agreement in respect of the pool or part thereof.

(4) If in the time specified in the order referred to in subsection (3), being not less than six months from the date of the making of the order, the working interest owners and royalty owners fail to enter into a unit agreement and a unit operating agreement approved by the Committee, all drilling and producing operations within the pool or part thereof in respect of which the order was given shall cease until such time as a unit agreement and a unit operating agreement have been approved by the Committee and filed with the Chief Conservation Officer.

(5) Notwithstanding subsection (4), the Committee may permit the continued operation of the pool or part thereof after the time specified in the order referred to in subsection (3) if it is of opinion that a unit agreement and unit operating agreement are in the course of being entered into, but any such continuation of operations shall be subject to any conditions prescribed by the Committee.

Senator Thorvaldson: I should like to ask a question of Mr. Hunt. Similar enactments to this of the provinces contain sections that correspond generally to section 27, and the draft of the new section 27. Can you tell me which is closer to the provincial enactments—the original section in the bill, or the one that is proposed by the Canadian Petroleum Association? If I recall correctly I think the Manitoba Act contains provisions very similar to those in the draft, and I am wondering why you did not follow the method suggested originally by the association.

Mr. Hunt: When we were discussing the approach that might be taken with respect to any form of compulsory unitization we did, of course, try to obtain the views of the industry. It was felt at that time that in addition to providing for voluntary unitization, and in addition to providing for compulsory unitization where 65 per cent of the working interest owners were in agreement, that compulsory part should be promulgated at a later time when and if desired. It was also felt that there should be some absolute mandatory compulsion where it could be proved that failure to unitize was tantamount to waste. It was submitted that this would be a fairly arbitrary approach to the subject. However, it is recognized, of course, that although the committee or the administrative officers would do their best to determine the engineering facts, it is very, very hard to determine precisely whether waste is being committed. It finally comes down to a matter of judgment based on the best facts ascertainable at the time.

So, after a passage of time, and after having had a chance to review it, it did seem appropriate that rather than place this responsibility on the department and on the minister, it would be better to refer the matter to the committee where there could be open hearings, and where all parties who might be affected could at least make their views known publicly.

Senator Thorvaldson: And that is provided for in the amendment?

Mr. Hunt: That is right, yes.

The Chairman: Shall this amendment carry?

Hon. Senators: Carried.

The Chairman: I should mention to the committee that there are several instances of

what we call typographical errors in the bill. These will be corrected in the reprinting, and we do not need formal amendments to take care of them.

With respect to the appeal sections, particularly sections 40 and 41, there was no submission made by the Canadian Petroleum Association. Those who were at the meeting last week will recall that we had considerable discussion of the fact that in section 40 there is a provision whereby an interested person by petition may get to the Governor in Council. I would take it that this is in respect to policy, or the factual situation—a general review of the order of the committee.

When the Governor in Council makes that order, the committee then has to adjust its decision to whatever that order is. But then, there is language at the end of section 40 which provides that when the decision of the Governor in Council becomes a decision or order of the committee, it is binding upon the committee and upon all parties.

Our feeling was that if it is binding on the committee and upon all parties, then that is the end of the road so far as an interested person is concerned, but there is a question as to whether any other right of appeal—for instance, an appeal to the Supreme Court of Canada—would exist even though section 41 provides for an appeal. So, I suggest that after the word “is” in the second to last line of section 40 we insert the word “subject to section 41”.

While the Director of Legislation is not here today I might say that I did discuss this with him, and as he expressed it to me over the telephone he saw no objection to doing this. It did not interfere in any way with the intended purpose of the bill.

So, my suggestion is that we insert after the word “is” in the second to last line of section 40, the words “subject to section 41”. Is that the wish of the committee?

Senator Prowse: May I raise one point, Mr. Chairman. I think your objection to section 40 and to the interpretation given might be perfectly in order. It seems that section 40 was intended to give a residual, absolute power to the Governor in Council as a matter of policy.

The Chairman: It does.

Senator Prowse: They might find they missed something in the act, for example, so they get a decision from the Supreme Court

of Canada. There are two things. Section 40 gives the residual power to the Crown and section 41 gives an appeal in routine matters.

The Chairman: No, an appeal only on two things, on a question of law and on a question of jurisdiction. That is scarcely routine.

Senator Prowse: I follow that. You have two factors. Perhaps you can tell me, Mr. Chairman, or perhaps the officers of the department could offer an opinion. Would this create a situation in which we would take away from the Crown that residual power, which I believe it is generally considered ought to be kept?

The Chairman: No, because I have another amendment to propose to section 41, so that even after the decision of the Supreme Court of Canada, if you have not already gone to the Governor in Council you would still have a right to go to the Governor in Council.

Senator Prowse: After the appeal.

The Chairman: Yes.

Senator Prowse: That would apply to the department as well as to anybody else?

The Chairman: That is right. Is it agreed that we should add these words to section 40?

Hon. Senators: Agreed.

The Chairman: In section 41, there is a limited kind of appeal. It is an appeal from the decision of the committee on a question of law or on a question of jurisdiction only. This is a right any interested person has. The decision of the Supreme Court of Canada may be confirming the jurisdiction and dismissing any question of law being involved, in which event the original decision of the committee would stand. If the decision of the Supreme Court of Canada differs, the committee must amend its decision to conform. But then the ultimate thing you have is the decision of the committee. At that stage, if you assume the interested party had not gone to the Governor in Council, because that is an entirely different kind of appeal, it may be that as a result of the decision in the Supreme Court of Canada an avenue would open up for consulting or seeing the Governor in Council that did not exist before.

I therefore suggested that in section 41, in cases where the Governor in Council has not already been consulted, we should pre-

serve the right, in relation to the committee's decision that follows the disposition of the appeal, of the interested party to go to the Governor in Council. I did not get any assistance from the director of legislation; he was not difficult to deal with but he just did not feel he should take a hand in the language of it; so the Law Clerk and myself have taken a hand in what we think should be there. You can see what you think of it. We are proposing that there should be added to section 41 a subsection (5) which would say:

Any order made by the committee pursuant to subsection (4)—

which is the one making the committee adopt as its decision what the Supreme Court of Canada tells it should be the decision—

shall, unless such order has already been dealt with by the Governor in Council pursuant to section 40, be subject to that section.

In other words, if the matter has not already been dealt with by the Governor in Council, if the Supreme Court of Canada decision affirms the decision of the committee, even if a person had gone to the Governor in Council first he should not be able to go back because it has been dealt with. We have to cover the case where the Supreme Court of Canada may make a decision which is at variance with what the committee has said, which the committee must adopt that as its decision. That may open up vistas or avenues, whatever you want to call them. You may feel the interested party would say, "If I go back to the Governor in Council on this basis I have a different sort of presentation to make", and therefore he should have the right. I am told by some of the authorities that the situation is intended to be inherent in these procedures in sections 40 and 41. When they are intended to be inherent and they are not obviously so, this is the opportunity to make them obviously inherent I would say. Are there any views from the committee on this?

Senator Burchill: The interested party has the right to go to the Governor in Council before going to the Supreme Court?

The Chairman: There are two entirely different appeals. The appeal to the Supreme Court of Canada is only on a question of law or of jurisdiction.

Senator Connolly (Ottawa West): After the committee?

The Chairman: Yes.

Senator Phillips (Rigaud): You are suggesting it should be exherent rather than inherent?

The Chairman: Yes.

Senator Carter: Would that not be necessary to allow the Government to control policy? Otherwise somebody else would be controlling policy.

The Chairman: It gives the Government, through the Governor in Council, the ability to control policy.

Senator Prowse: Are you assuming the Governor in Council is always an interested party?

The Chairman: I would think so. That was my reading of "interested party". If the Governor in Council is not an interested party in these proceedings I do not know who else would qualify. What are the views of the committee on such an amendment? Is there any expression of views? ...Are you prepared to adopt it?

Mr. Hunt, I should give you an opportunity to make any comments if you wish to make any. You may not wish to do so.

Senator Thorvaldson: Could Mr. Hunt express a view on the practicality of the proposed amendment? Is it practical from the point of view of the administration?

Mr. Hunt: The intricacies of the appeals section are a little outside my purview really. If I might express a personal opinion, I had understood that the new order by the committee in accordance with the Supreme Court could be reviewed again by the Governor in Council, but I would hesitate to apply something making it explicit. Sometimes when a matter is explicit the balance somewhere else is upset.

The Chairman: Quite apart from the field in which we are operating here, very often when you are explicit you do not gain your point as well as when you are subtle.

Do the committee agree that this amendment should be added as subsection (5) to section 41?

Hon. Senators: Agreed.

The Chairman: That concludes our consideration of the amendments. Are there any

other questions on this bill you would like to ask or matters you want to discuss?

Senator Desruisseaux: It might not be pertinent to what has been said before, but I would like to know whether the department has maps of the offshore sections of the great north showing that it is Canadian.

Mr. Hunt: The base maps that we use of the north are obtained from the Department of Energy, Mines and Resources and, of course, any maps that I have seen published there clearly indicate that all land areas north of mainland Canada are Canadian.

Senator Desruisseaux: Have they not all the islands?

Mr. Hunt: Oh, yes. I realize there have been references to maps published elsewhere. I have never seen any.

The Chairman: Are there any other questions?

Senator Thorvaldson: Supplementary to that, do you know, or is the department aware of any other claim except Canada to the Arctic Islands that we recognize as being directly north of Canada and to which we lay claim?

The Chairman: You are talking factually?

Senator Thorvaldson: Factually, yes. Surely the department must have knowledge. If, for instance, the United States lays claim to some of those islands—

Mr. Hunt: In looking at the situation from the administrative point of view, we have administered the mineral, oil and gas rights or the research rights generally on the basis that they are Canadian and we have had no indication in our department that there is any thought in any quarter to the contrary. A full answer I suppose would perhaps be obtained from the Department of External Affairs.

Senator Desruisseaux: There have been no discussions with some other foreign nations?

The Chairman: That would not be a function of the department, to which this man belongs. That would be hearsay, the same as what you have heard.

Senator Prowse: There is one question that still worries me, and that is clause 38 which begins your appeals. Perhaps the department can tell me, in regard to clause 38, subclause (3), what did you go to the Exchequer Court for?

The Chairman: Stated case. That is what it says at the top of page 28, clause 39, which is a stated case to get an opinion.

Senator Prowse: That is clause 39. You are given that right under clause 39 surely. I cannot see what clause 38 does. It just says that first the committee is final and conclusive and then it says the Exchequer Court has exclusive jurisdiction to hear and determine. It does not say stated cases for a writ of *certiorari*, prohibition or *mandamus* or for an injunction in relation to any decision or order of the committee or any proceedings before the committee. This deals with *certiorari*, prohibition or *mandamus* or for an injunction. Subclause (3) says:

(3) A decision or order of the Committee is not subject to review or to be restrained, removed or set aside by *certiorari*, prohibition, *mandamus* or injunction or any other process or proceeding in the Exchequer Court...

And the question of fact or on the matter of jurisdiction. I do not know how else you get that.

The Chairman: The Law Clerk and I have discussed the relationship of this section and its various parts. Mr. Hopkins, would you assist us please?

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: Yes, I had the benefit of discussing this with the Director of the Legislation Branch. Everyone's reaction is the same: It looks like the legislation giveth and taketh away at the same time. What it does in the first place is to confer exclusive jurisdiction on the Exchequer Court, and that has the effect of excluding the Superior Courts of the provinces. The second thing it does sounds a little bizarre, but there remains the question of natural justice which is not taken away from the courts' jurisdiction.

Those familiar with the prerogative writs remember *certiorari* proceedings where there has been a contravention of natural justice. This provision is contained in several acts and the same question comes up every time. It is a very sensible question and it may be that it could be got at some other way, and those are the two effects it does have. You mention a stated case. That is provided for in clause 39.

The Chairman: We say under clause 38 that you cannot go to the Exchequer Court to get any decision on a question of law or jurisdiction, under clause 39 you can go to the Exchequer Court on a stated case on a question of law or jurisdiction. All it means is that the committee is getting some advice. They may or may not take it.

Mr. Hopkins: The final authority is the Supreme Court of Canada.

Senator Prowse: If everybody in the legal department is happy, then I suppose I should be also.

The Chairman: Are you ready for the questions? Shall I report the bill with the amendments that were agreed to today?

Hon. Senators: Agreed.
Carried.

Senator Connolly (Ottawa West): May I ask a question? I wonder how the chairman gets time to go through these bills as carefully as he does with a fine tooth comb. This last demonstration must have taken a tremendous lot of time; you and the Law Clerk.

The Chairman: Yes, the Law Clerk and myself huddled for about 15 minutes yesterday afternoon.

Thereupon the committee proceeded to the next order of business.



First Session—Twenty-eighth Parliament

1968-69

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE
ON
BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 26

WEDNESDAY, MARCH 12th, 1969

*Complete Proceedings on Bill S-30,
intituled:*

"An Act respecting The Perth Mutual Fire Insurance Company".

WITNESSES:

*Department of Insurance: R. Humphrys, Superintendent. The Perth
Mutual Fire Insurance Company: H. G. Livingstone, President and
General Manager.*

REPORT OF THE COMMITTEE

The Queen's Printer, Ottawa, 1969

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Lang
Aseltine	Desruisseaux	Leonard
Beaubien	Gelinas	Macnaughton
Benidickson	Giguère	Molson
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Inman	Welch
Connolly (<i>Ottawa West</i>)	Isnor	White
Cook	Kinley	Willis—(30)

Ex officio members: Flynn and Martin

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, March 6th, 1969:

"Pursuant to the Order of the Day, the Honourable Senator Lang moved, seconded by the Honourable Senator Burchill, that the Bill S-30, intituled: "An Act respecting The Perth Mutual Fire Insurance Company", be read the second time.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Lang moved, seconded by the Honourable Senator Burchill, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, March 12th, 1969.

(28)

At 9.30 a.m. this day the Standing Senate Committee on Banking, Trade and Commerce met to consider Bill S-30, "An Act respecting The Perth Mutual Fire Insurance Company".

Present: The Honourable Senators Hayden (*Chairman*), Beaubien, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Inman, Isnor, Kinley, Lang, Macnaughton and Thorvaldson. (14)

Present, but not of the Committee: The Honourable Senators Grosart, Hays, McLean, Phillips (*Rigaud*) and Prowse. (5)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Upon motion, it was *Resolved* to print 800 copies in English and 300 copies in French of the proceedings of the Committee on the said Bill.

The following witnesses were heard:

Department of Insurance:

R. Humphrys, Superintendent.

The Perth Mutual Fire Insurance Company:

H. G. Livingstone, President and General Manager.

Upon motion, it was *Resolved* to report the said Bill without amendment.

At 9.45 a.m. the Committee proceeded to the next order of business.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, March 12th, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill S-30, intituled: "An Act respecting The Perth Mutual Fire Insurance Company", has in obedience to the order of reference of March 6th, 1969, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE

COMMITTEE ON BANKING, TRADE AND COMMERCE

EVIDENCE

Wednesday, March 12, 1969

The Standing Committee on Banking, Trade and Commerce, to which was referred Bill S-30, respecting The Perth Mutual Fire Insurance Company, met this day at 9.30 a.m. to give consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, this morning we are dealing first with Bill S-30, respecting The Perth Mutual Fire Insurance Company. We have before us Mr. H. G. Livingstone, President and General Manager, and Mr. S. Heighington, counsel. Our usual practice is to hear Mr. Humphrys first. I see no reason to depart from that practice now. May we have the usual order to print?

Upon motion, it was *resolved* that a verbatim report be made of the proceedings and that 800 copies in English and 300 copies in French be printed.

The Chairman: Right, Mr. Humphrys.

Mr. R. Humphrys, Superintendent of Insurance: Mr. Chairman and honourable senators, the purpose of this bill is to convert The Perth Mutual Fire Insurance Company from a mutual company to a stock company and, in consequence, to provide the amount of the authorized capital and to make consequential provisions as are necessary to cover the transitional stage from a mutual company to a stock company.

As a consequence, the bill has a clause that converts the company; it provides for the minimum capital stock; it provides for continuation of the board of directors, and it provides the corporate powers of the company as respects the classes of insurance it may do. It provides also that the provisions of the Canadian and British Insurance Companies Act shall apply to the company.

This bill really changes the character of the company and replaces the former act of incorporation. That is the reason the bill con-

tains provisions dealing with the classes of insurance that the company may transact.

The Perth Mutual Fire Insurance Company is a mutual company of really very long history. It was formed as a provisional company in the last century and has been a federal company since 1952. It is principally engaged in the fire insurance business and in the automobile insurance business. Its original character as a mutual company was in accordance with the custom of the time, where much fire insurance was done on a mutual basis whereby the policyholder would sign a premium note. He would pay part of the note in cash and remain liable for the balance of the note on call. As the years went by, this method of doing fire insurance and other types of insurance became less popular until now it is quite rare. Even in the case of The Perth Mutual Fire Insurance Company, the extent of the true mutual business that it now does is very small and most of its business is on a cash premium basis.

The remaining mutual policyholders number between 200 and 300. The company is a relatively small company, having assets of about \$4 million and a premium income last year of about \$3 million. It suffers the difficulty of small companies in the modern competitive atmosphere of the insurance business, and it becomes increasingly difficult for small companies to compete for the business.

As a mutual company it has no source of additional capital funds and, consequently, it finds increasing difficulty in expanding its product, its area of operation, and maintaining its volume of business in the face of the competition it has to meet.

It has suffered in the last few years in concert with most companies in the fire casualty field from underwriting losses. As a consequence, it has been seeking for some time associations with other well established and stronger companies that might enable it to take a better place in the insurance field.

The Economical Mutual is also a mutual company with a history not too different from that of the Perth Mutual. The Economical has its head office in Kitchener; it has been a federal company since 1936, and it is a much larger and stronger company than the Perth, having assets of some \$33 million. It has expressed interest in an association with the Perth Mutual.

Neither the Economical nor the Perth wanted to contemplate a straight merger of the two companies; they saw certain advantages in having a separate corporate entity. The Perth Mutual itself wanted to retain its separate identity, and it is well known in Stratford. The Economical saw certain advantages in operating through a subsidiary as compared to merging the two operations. So, this proposal is to convert the Perth Mutual to a stock company, and the Economical Mutual will take up the major part of the stock. They will be prepared to subscribe for \$1 million of the capital stock immediately the conversion is approved, and they are also prepared to subscribe up to another half a million dollars, if necessary.

This proposal has been placed before the mutual policyholders of the Perth at a special general meeting, and has been approved by them unanimously. Their interests are protected, since they may, if they so wish, take a mutual policy in the Economical, if they want to continue that type of insurance, and they will also have an opportunity to subscribe to the stock of the Perth Mutual, if they want to do so.

Mr. Chairman, I think that summarizes the purpose and intent of the bill. The insurance remains in the mutual field, since the Economical Mutual itself is a mutual company, having no stockholders.

There is a provision in this bill that will prevent the Economical Mutual selling its interests without the approval of the department, and this was put in at our suggestion in order to avoid the possibility of the company being converted to a stock company and then promptly sold to some other interests. So, this will be under control.

Senator Desruisseaux: Mr. Chairman, I would like to ask Mr. Humphrys whether there was unanimous approval by the policyholders of this change.

Mr. Humphrys: Yes, senator; there were no dissenting votes.

Senator Desruisseaux: Because it is a mutual insurance company, did it in the past receive some tax advantages and, if so, what were they?

Mr. Humphrys: No, I think there were no special tax advantages to a mutual insurance company in the fire and casualty field.

Senator Macnaughton: Mr. Chairman, where is that provision with reference to the Superintendent of Insurance, should any future change be contemplated?

Senator Croll: Clause 8.

Mr. Humphrys: It is clause 8, on page 4, senator.

The Chairman: Senator Croll?

Senator Croll: I move that we report the bill.

The Chairman: Just a moment. We have two officers of the company here, Mr. H. G. Livingstone, the president and general manager, and Mr. S. Heighington, counsel. If you wish to add anything to our consideration of this bill—and it would appear to be well on its way to passing in this committee—we are ready to hear you.

Mr. H. G. Livingstone, President and General Manager, Perth Mutual Fire Insurance Co.: Mr. Chairman, I think that Mr. Humphrys has summed it up adequately, and I have nothing to add.

The Chairman: Are you ready for the question?

Hon. Senators: Yes.

The Chairman: Shall I report the bill without amendment?

Hon. Senators: Agreed.



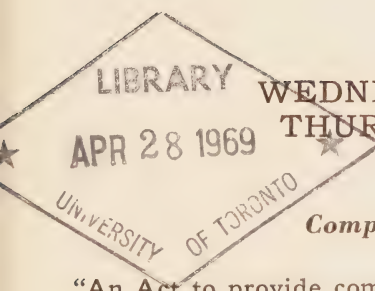
First Session—Twenty-eighth Parliament

1968-69

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE
ON
BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 27



WEDNESDAY, MARCH 19th, 1969

THURSDAY, MARCH 20th, 1969

***Complete Proceedings on Bill C-155,
intituled:***

“An Act to provide compensation to farmers whose agricultural products are contaminated by pesticides residue, and to provide for appeals from compensation awards”.

WITNESSES:

Department of Agriculture: C. R. Phillips, Director-General, Production and Marketing Branch. C. H. Jefferson, Director, Plant Products Division.

REPORT OF THE COMMITTEE

The Queen's Printer, Ottawa, 1969

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Leonard
Aseltine	Desruisseaux	Macnaughton
Beaubien	Gelinas	Molson
Benidickson	Giguère	Phillips (<i>Rigaud</i>)
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Isnor	Welch
Connolly (<i>Ottawa West</i>)	Kinley	White
Cook	Lang	Willis—(30)

Ex officio members: Flynn and Martin

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, March 11th, 1969:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Hays, P.C., seconded by the Honourable Senator Fournier (*de Lanaudière*), for the second reading of the Bill C-155, intituled: "An Act to provide compensation to farmers whose agricultural products are contaminated by pesticide residue, and to provide for appeals from compensation awards".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Argue, seconded by the Honourable Senator Desruisseaux, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, March 19th, 1969.

(29)

At 9:30 a.m. this day the Standing Senate Committee on Banking, Trade and Commerce met to consider Bill C-155, "Pesticide Residue Compensation Act".

Present: The Honourable Senators Hayden (*Chairman*), Benidickson, Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Gélinas, Giguère, Haig, Hollett, Isnor, Savoie, Walker, Welch, and Willis. (18).

Present, but not of the Committee: The Honourable Senators Bourget, Phillips (*Rigaud*) and Prowse. (3).

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The following witness was heard:

Department of Agriculture:

C. H. Jefferson, Director, Plant Products Division.

At 10:40 a.m. the Committee adjourned consideration of the said Bill until 2:00 p.m. this day and proceeded to the next order of business.

* * *

At 2:00 p.m. the Committee *resumed* consideration of Bill C-155.

Present: The Honourable Senators Hayden (*Chairman*), Benidickson, Burchill, Carter, Desruisseaux, Gélinas, Giguère, Haig, Isnor, Kinley, Lang, and Welch. (12)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The following witness was heard:

Department of Agriculture:

C. R. Phillips, Director-General, Production and Marketing Branch.

After discussion, it was *agreed* that clause 5 be redrafted.

At 2:35 p.m. the Committee adjourned until March 20th at 10:45 a.m.

THURSDAY, March 20th, 1969.

(30)

At 10:45 a.m. this day the Standing Senate Committee on Banking, Trade and Commerce met to *resume* consideration of Bill C-155, "Pesticide Residue Compensation Act".

Present: The Honourable Senators Hayden (*Chairman*), Aird, Benidickson, Burchill, Carter, Connolly (*Ottawa West*), Croll, Desruisseaux, Flynn, Gélinas, Giguère, Isnor, Kinley, Lang, Phillips (*Rigaud*), Savoie and Walker. (17)

Present, but not of the Committee: The Honourable Senators Denis, Eudes and Pearson. (3)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The following witness was heard:

C. R. Phillips, Director-General, Production and Marketing Branch was again heard.

Amendment:

Sub-clauses (1), (2) and (3) of clause 5, were amended.

NOTE: The full text of the amendment appears by reference to the Report of the Committee immediately following these Minutes.

Upon motion, it was *Resolved* to report the said Bill as amended.

At 11:30 a.m. the Committee proceeded to the next order of business.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

THURSDAY, March 20th, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill C-155, intituled: "An Act to provide compensation to farmers whose agricultural products are contaminated by pesticide residue, and to provide for appeals from compensation awards", has in obedience to the order of reference of March 11th, 1969, examined the said Bill and now reports the same with the following amendment:

Clause 5: Strike out subclauses (1), (2) and (3) thereof and substitute therefor:

"(1) Where he deems it necessary the Minister may require as a condition for the payment of any compensation to a farmer under this Act, the consent of the farmer for the Minister to pursue any action that the farmer may have in law against any person whose act or omission resulted in or contributed to the presence of the pesticide residue in or upon an agricultural product.

(2) Where the Minister receives, as the result of any action taken by him pursuant to subsection (1), an amount of any judgment for damages in excess of the amount paid or to be paid to the farmer in compensation, he shall reimburse the farmer to the extent of such excess.

(3) The Minister shall in paying compensation take into account any amounts realized by the farmer in any action in law the farmer may have pursued against any person whose act or omission resulted in or contributed to the presence of the pesticide residue in or upon the agricultural product".

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

EVIDENCE

Wednesday, March 19, 1969.

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-155, to provide compensation to farmers whose agricultural products are contaminated by pesticide residue, and to provide for appeals from compensation awards, met this day at 9.30 a.m. to give consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have before us this morning Bill C-155. Last week, in our consideration of other bills that had come to us from the other place, we decided against having *Hansard* make a report of the committee's proceedings. What are the committee's feelings with respect to this bill?

Senator Croll: Why would you decide not to have a *Hansard* report of the committee's proceedings?

The Chairman: The committee decided.

Senator Croll: What was the thinking behind that decision?

The Chairman: It was because the bill had been considered and passed by the House of Commons, and the committee felt there was no purpose to be served in having a *Hansard* record. We did not anticipate submissions of a nature that would substantially alter the bill.

Senator Croll: Are there submissions to be made here today?

The Chairman: No, we have had no representation from any person, but we have with us the director of the Plant Products Division who will explain the purposes of the bill to us.

I have looked at this bill, and it would seem to me that some of the objections that were taken to one of the other bills last week would not be sustainable in respect to this

bill, because it contains provisions as to compensation which the other bill did not contain.

Senator Croll: Mr. Chairman, I know that a most thorough explanation of this bill was given on second reading, but, you see, the other committee heard this gentleman and we did not, and if we want to look at what he said later on. . .

The Chairman: I take it that there is a motion to print?

Senator Croll: Yes, I so move.

Upon motion, it was *resolved* that a verbatim report be made of the proceedings and that 800 copies in English and 300 copies in French be printed.

The Chairman: We have with us this morning Mr. Jefferson, who is the director of the Plant Products Division, of the Department of Agriculture. Mr. Jefferson, without going through this bill section by section at the moment would you just tell us its chief purposes and functions?

Mr. C. H. Jefferson, Director, Plant Products Division, Department of Agriculture: Mr. Chairman, honourable senators, putting it as briefly as I can, this bill has been presented because of the development of a new situation. Pesticides are now used to a great extent and are an integral part of food production technology. Their use is directed by recommendations from the Department of Agriculture and other departments. These directions are based on the best available information at the time, to indicate the utility and safety of the pesticides and the way in which they should be used, both to achieve effectiveness to avoid harmful consequences, one of these being residues in food products produced on Canadian farms.

In that assessment the department works with the Department of National Health and Welfare. An assessment is made of the significance of any residues that might result. The significance for operational purposes may be

referred to in terms of a tolerance in parts per million in the food. When a pesticide is put into the market place, if you like, for use by farmers it may appear that it can be used safely without creating a residue problem, but subsequently new information obtained through research may show that possibly those residues are higher than anticipated or more dangerous than anticipated. Government action under the Food and Drugs Act could follow to prevent the sale of that food produced with the use of a pesticide according to recommendations. Where this happens the farmer is blameless, one might say; he cannot sell his produce because of government action that initially no one could anticipate. This was regarded as an injustice to the farmer and it was considered that some method should be found to protect him from that kind of loss.

The *ex gratia* payment approach had been tried in a case that occurred in Grand Forks, of which some of you may have heard. However, that was not very satisfactory and it was thought that provision should be made to regularize the payment of compensation under specified conditions, which I will mention. Part I of the bill covers this situation.

Part II is also new. It provides for appeals against compensation awards under two bills that I believe have been before you, namely Bill C-154 and Bill C-156. These cover compensation for plants destroyed under the Plant Quarantine Act or livestock destroyed in a program to prevent disease. Heretofore there has been no procedure whereby a producer who felt he had not been awarded adequate compensation for his loss could appeal; he had nowhere to go. Part II provides for assessment by another party—in effect a judge—of the correctness of the award made by the minister under these other statutes.

The Chairman: When you are talking about the appeal section, I notice that in section 11 the Governor in Council is given authority to appoint an assessor and deputy assessors, and

to hear and determine appeals from compensation awards made under this Act or under any other Act to which this Part is made applicable.

Is there anywhere in this bill where this part is made applicable to any other act? I was just glancing at it and I did not see any thing in Part II. How do you propose to do that?

Mr. Jefferson: As I understand it, the applicability is provided under the particular

statute that provides for compensation. Under the Plant Quarantine Act, Bill C-154, the authority would be there.

The Chairman: So you find the authority in the statute concerned, which may be Bill C-154, or Bill C-156?

Mr. Jefferson: That is correct.

Senator Croll: You have referred to various compensations. What is involved in total in money and numbers over a period of, say, a couple of years?

Mr. Jefferson: With respect to pesticides there has been this one incident in Grand Forks, involving four producers. The total payment made during that period, 1966-67, was of the order of \$63,000.

Senator Croll: To the four?

Mr. Jefferson: To the four as a total amount. This is the only case in which direct compensation in dollars has been provided. There was another case in which assistance was provided, but it is questionable whether that one would have qualified under this bill, because it was impossible to establish that the residues arose through the proper use of the pesticide found in the product.

Senator Croll: Was that at ministerial discretion?

Mr. Jefferson: At that time it was, because there was no provision under which to consider compensation except on an *ex gratia* basis.

Senator Croll: Are we passing an act here that is likely to affect only half-a-dozen or a dozen people in Canada?

Mr. Jefferson: It is difficult to predict how many might be affected. We hope it will be possible to avoid any financial burden on farmers because of pesticide residues. In other words, if preventive action can be taken these cases will not arise. However, based on past experience and the concern people have about pesticide residues, it is anticipated that in the next three or four years there could be a number of cases in which compensation within the terms set out in this legislation would be justified. It is thought on the basis of that anticipation to be advisable to have some procedure in being that could be used to deal with such a situation, and that avoids the delays occurring when an *ex gratia* approach is taken. I hope

there will be no cases, but it is rather like issuing an insurance policy whereby on an actuarial basis we can assume there will be a number of cases, which may be of the order, as you say, of four or five.

Senator Walker: Are you going to all this trouble of putting through this complicated bill and setting up this expensive machinery for three, four or five cases? Would it not be better to use your energies and talents in getting rid of the bad pesticides?

The Chairman: It goes a little further than that. This machinery is being made available to determine the amount of compensation. These procedures are available under a number of bills, not only this bill, in relation to artificial agricultural chemicals.

This is only one of the bills. We had two bills last week that we dealt with concerning the infestation of plants and there is a provision for compensation. Under that act the procedures to be followed may be the ones that are provided in this bill. In one sense what you said is correct, that is, there have only been three or four cases where the minister has made an *ex gratia* payment because it was in his discretion. There was no statutory authority. Now, they are creating a statute to provide this authority. I think you can look for it and admittedly we should. There will be an increase in use of this sort of thing that may create these residues that are harmful to the crops and would be harmful to people that might use these crops as food. That is the tendency.

Senator Haig: Mr. Chairman, do I understand from Mr. Jefferson that the producer has to use the pesticide that is registered under the act? He must use it properly according to the regulations, and as a result of some unknown factor the food has a residue left on it which is harmful, does he apply for compensation? Is the food destroyed? How does it get into the process or the stream of getting compensation?

The Chairman: If they do not destroy their food there cannot be any claim.

Mr. Jefferson: Mr. Chairman, I have tried to give some background and to get to your point. In section 3 of Part I it is explained that in order to qualify for compensation the farmer's produce must have been sampled by a food and drug inspector through official channels. As a result of that inspection and analysis, a residue is found that is of sufficient concern under the Food and drugs Act

to prompt the Minister of National Health and Welfare to advise the Minister of Agriculture that this produce cannot be sold—

Senator Haig: Who asks for the inspection?

Mr. Jefferson: This is done through the regular inspection enforcement program under the Food and Drugs Act. It is done on the basis of statistical sampling and assessment of where the problems might arise. In other words, for determining whether or not there was a problem would be by the Department of National Health and Welfare and through their official analysis and the establishment that the food product was adulterated and its sale would violate the Food and Drugs Act.

Senator Haig: He would have to prove he used a certain pesticide and used it in an improper manner.

Mr. Jefferson: Following this assessment of how that residue got there. There is a good deal of information on the cause-effect relationship of the use of pesticides and residue levels in food and it is anticipated that it could be determined fairly readily, the farmer would not in those cases be involved in doing the research, that the residue did arise through the following of recommendations. If I might use an illustration. Suppose it was DDT residue in vegetables of some sort that exceeded the tolerance of seven parts per million and exceeded it to an extent that it was of immediate concern to the Department of National Health and Welfare and that this food should not be marketed because it would be damaging to health.

The evidence may well show that that kind of a residue, and excessive residue, could arise from the following of official recommendations that had been put on the use of DDT and if that was the case then this producer would be eligible for compensation. He would have met those criteria. He could have used the product according to recommendations and wound up with an excessive residue.

Senator Haig: He gets paid for that?

Mr. Jefferson: And then he is eligible for compensation. The thing that follows is the determination of his loss.

Senator Haig: By the Department of Agriculture?

Mr. Jefferson: By the Department of Agriculture in whatever manner.

Senator Haig: Then it comes to the Health and Welfare first and then you find the residue is excessive and you advise the Department of Agriculture and they get in the act?

Mr. Jefferson: Yes, we have a procedure now of co-ordination of activities between the Department of National Health and Welfare and initial inspection agencies which are also providing information on these pesticides. We think we know generally what the implications are in terms of excessive residues. We do not anticipate a basis whereby we will have very many cases, but let me turn this around as to what can happen. There is a move afoot now in the international sectors, to establish tolerance levels for international trading purposes. Let us say that where we have been operating with a tolerance level of seven parts per million of DDT, which on the health standpoint of our people's assessment in the National Health and Welfare, is admissible. It accommodates our agricultural production requirements for that pesticide. Through the international consideration of this matter the tolerance is reduced, say, to one part per million and this is as a result of a consensus and we have to accept that, then perhaps the residues that are occurring while we are well within the seven parts per million tolerance are over the one part per million tolerance. This would create a situation again where the producer is blameless but caught. We have not been able to change the recommendations for use fast enough so that he can develop a new use pattern or use alternative products and avoid exceeding that one part per million tolerance.

The Chairman: You are talking about two different things. You are talking about international trade now. If you have international trade regulations—let us say the degree of tolerance of food products passing from one country to another, such as one or two parts per million and you have here where the Department of National Health and Welfare says that as far as Canadians are concerned, such as 30 people, you can have seven parts. You then have the farmer in a bind. He cannot operate in the international field.

Mr. Jefferson: The point I was making, Mr. chairman, was as a result of this international activity where the domestic tolerance is reduced to one part per million.

The Chairman: What is the justification for doing that? If the Department of National Health and Welfare is satisfied that the Canadian can accommodate himself to seven parts of DDT to a million gallons is it, or to a million what?

Mr. Jefferson: A million parts.

The Chairman: A million parts.

Mr. Jefferson: One pound in a million pounds.

The Chairman: If he can accommodate himself to that and it does not damage his system in any way then by what authority, just because there is an international agreement are you going to put him in the position where he suffers loss and cannot trade internationally? He has followed Canadian acceptable standards. Are these standards something you run up and down like playing with a yo-yo? It has got me puzzled at the moment.

Mr. Jefferson: Mr. Chairman, I might try and explain that this is not easy. It is not a black and white situation. The tolerance of, shall we say, DDT at seven parts per million does not really matter, but it will serve to illustrate the assessment of the acceptability of that in terms of the current criteria for measuring the hazard. It may show that there is a one hundredfold or one thousandfold safety factor relative to a person eating that food with that level in it for his whole lifetime, whatever the lifetime is and there is evidence that it would be of no consequence.

But new information could come along, through research, that shows that perhaps at that concentration a person's behaviour changes, or it effects the third or the fourth or the fifth generation, some way. But they are so "way out", the facts, or the possibilities, that at any given time one cannot crystal ball the future with that degree of accuracy. So it is the assessment of this kind of thing that can change. It is happening with smoking, as you are all aware, and it is happening with many other things. It is not possible to say that a level of seven is safe and that eight is harmful, but for administrative purposes you have to draw a line somewhere. The question is, how do you draw it?

It would be better, of course, if someone from the Department of National Health and Welfare spoke to this, than I; but my understanding of the thing is that we will say that the line is drawn at seven parts per million in this example I am using.

The Chairman: What you are saying is that the starting point of all this lies with the Department of National Health and Welfare, under the food and drugs provisions, and that they decide whether food is adulterated, and then they notify the Department of Agriculture and then you have to take it up from there.

Senator Hollett: If this is something that I am using and if it turns out in the way that is suggested, where do I get my compensation?

The Chairman: Under this bill you would get it from the minister, if you came within these regulations.

Senator Croll: But he is a consumer.

Senator Hollett: I am a consumer.

Senator Croll: You just...

Senator Hollett: I just asked that question in view of what Senator Walker said about half a dozen people—but there may be a thousand people who have suffered damage as a result of pesticide. Have they no redress about that?

Senator Walker: You could sue the fellow you bought the food from, the merchant you brought it from, to recover damages.

Senator Hollett: What if I am the person who was issued a permit to use that material?

Senator Walker: The merchant would then be the person.

Senator Croll: Who invites the Department of Food and Drugs man to the farm to see what is what?

The Chairman: He goes without invitation.

Senator Croll: There are thousands of farms. It is not a hit and miss proposition, is it?

Mr. Jefferson: Ordinarily, the food and drug inspection is back at the retail and wholesale food distribution level. They ordinarily are not operating right at the farm.

Senator Croll: They would catch it?

Mr. Jefferson: They would catch it in the market place. Then, if they found a residue that is of concern to them, they track it back to the source.

Senator Croll: When you say that they catch it in the market place, you mean that they would get it at one of the large stores?

Of course, if they catch the last ten per cent of it, it means that 90 per cent of it has already gone out.

The Chairman: That is right.

Mr. Jefferson: That is a possibility, but we are not talking about the percentage of produce here, which is probably about one-tenth of one per cent of the total, in terms of meaningful residue levels, meaningful in the sense of being damaging to health.

This whole exercise of reviewing pesticides for healthfulness, monitoring food for healthful levels, is really miles and miles back, if you like, of the levels that would likely create any health problem.

There is a tremendous safety barrier that is being maintained, and the chance is small of getting a food which is adulterated, through normal use. Now, this does not avoid a situation where there is a spill or some accident; we cannot do much about those things. The chance of getting a significantly dangerous residue through normal practice is extremely remote. It just has never happened in this country.

Senator Welch: It seems to me that there should be no necessity for such an act as this, because each one of these packages goes out normally to the market with instructions how to use it. The farmer is pretty well instructed as to how long he can use it before the article he sells goes on the market. If he is careless enough to put on this DDT or other substance, or if he is careless enough to put these sprays on, say, a week or three or four days before he goes to the market, he must expect trouble, because the residue is still on the foliage.

In the same way, when you are shipping apples to England, if you spray when it is the last of the harvest at the first of October, if you spray late, on the 15th September, then you are not allowed to ship that food to the world market, because there is a residue on the end of the apple that is injurious to people.

It seems to me that the whole thing rests back with the farmers—because if you want to spray your crops three days before you go to the market, the whole thing would be turned down, or could injure a lot of people—unless you are paying the farmer for his crop.

The Chairman: I do not think it is that easy to get money out of the minister under this

bill, but Mr. Jefferson wants to give an answer to that.

Mr. Jefferson: This bill would not provide for compensation in the circumstances you describe, if the residue arises from carelessness on the part of the farmer who puts it on or as a result of malformulation by the chemical company that prepared the pest control product or the pesticide. This bill would not provide for compensation in those circumstances.

In the first case the producer is responsible; he has misused the product and he is accountable.

In the second place, if it is the manufacturer who has made the mistake in formulating the product and does not have the right percentage, or if he has given improper directions, it would be he who would be responsible. This covers cases where the federal Government may be responsible and may have changed the rules.

Senator Welch: Is it the idea of this bill to compensate the farmer, or is it to protect the people, the consumer?

Mr. Jefferson: Basically, it is to protect the producer. This bill will not protect the consumer. The Food and Drugs Act will protect the consumer with respect to adulterated food.

Senator Welch: Why protect the consumer from his own carelessness?

Mr. Jefferson: It is not for his own carelessness, as I tried to indicate. It is where he is caught out, because he did in fact follow the recommendations for use and either the official recommendations for use were in error or, because of new information, the Department of National Health and Welfare felt that the old parameters of tolerance levels were too broad and that they needed to be restricted—and that the farmers could not adjust, if you like, because there was not an opportunity to adjust to the new rules of the game.

I might say, too, that one of the reasons—and I should have said this earlier—for this bill, is to remove to the extent possible the apprehension that agricultural producers in Canada might have about using pesticides, for fear of losses arising from a change in the rules—either as far as using them are concerned or the directions for use.

Senator Walker: Is it not a good thing that the farmer would fear and would do their best to get rid of these pests?

The Chairman: You are right here, Senator Walker, but the concept here starts with the Food and Drugs section. They make the determination on food and drugs as to what is an adulterated product. They might have made a regulation some time ago that seven parts of DDT to a million would be something that the human system could stand. So then the farmers go ahead and use this material prepared in that fashion on their produce and everything goes along fine. Then the Department of National Health and Welfare have a second look and they have more studies and more information is turned up around the world in research, and they say, "Oh, the seven parts was too high; it should be four or it should be five parts."

Now, the farmer has gone out and used this product; the manufacturer has made it on that basis and sold it. Suddenly the Department of National Health and Welfare change the rules. The farmer immediately has a product that is not in accordance with the rules and therefore he cannot sell it. Under those circumstances, since that change has been brought about by action of some Government department, in the best interests of the people, if the farmer's crop is not saleable, then he should be compensated. That is the thinking behind the bill.

Mr. Jefferson: If I might speak to that point, Mr. Chairman, the use of pesticides is widespread. Modern food production not just in Canada but around the world is dependent upon the use of pesticides. It would be impossible for most segments of Canadian agriculture to be even as competitive as they are in the world market without the use of pesticides. We can say we will not use them in Canada and we can close out our agricultural industry, but we are still going to need food and, if we were to apply the rules to imported foods, we would have to rule out citrus fruits, our winter fruits and our winter vegetables, no matter where they come from.

The use of pesticides is an integral part of production. There is a risk associated with the use of pesticides, just as there is a risk associated with our transportation system. One way of getting away from car accidents or highway accidents would be to have no cars.

The Pest Control Products Act, which I understand you will be dealing with later,

and the Food and Drugs Act are designed to protect the consumer of food—directly, in the case of the Food and Drugs Act, by keeping from the market foods that are damaging to health, and indirectly, in the case of the Pest Control Products Act, by keeping from the market pesticides that are going to result in damage to food.

Senator Croll: Can you give me the names of the two or three largest manufacturers of pesticides in Canada?

Mr. Jefferson: I may not have these ranked properly, but I would say Dupont, Niagara, the Interprovincial Co-Operatives and Green Cross products.

Senator Croll: Are most of our pesticides imported or do these companies supply enough for our people?

Mr. Jefferson: Most of the basic ingredients are manufactured outside our country, in the United States, Germany or the United Kingdom. The products tend to be formulated in Canada; the active ingredients come in and are put together here ready for distribution and farm use.

Senator Hollett: Mr. Chairman, under section 2 of the bill "inspector" is said to mean a person designated as an inspector pursuant to section 6. Section 6 says that the minister may designate any qualified person. Is there any definition of qualified person? There does not seem to be in this act. At least I cannot find it.

Mr. Jefferson: Not in the particulars, but he would be a public servant employed under the Public Service Act.

Senator Hollett: But he must have some qualifications with regard to pesticides and that sort of thing.

The Chairman: I would expect they would follow the procedure of writing specifications for the job.

Senator Hollett: I would like to know what his qualifications would have to be. It seems most important from the point of view of this act. A whole lot depends upon the qualifications of the inspector.

Senator Connolly (Ottawa West): He would probably be a member of 4-H.

Mr. Jefferson: It would depend on what area was involved. If the Department of Agriculture was involved, they would be clas-

sified as agricultural officers and would be graduates of agricultural colleges or would have taken courses in the biological sciences. If it was somebody just involved with sampling, say, he might be called a primary products inspector, and would be a high school graduate, so far as the academic part is concerned, but would have had on-job training in how to sample products. If he was involved in sampling products for residue determination, he would be very likely somebody under the Food and Drugs Act who would have qualifications similar to those of an agricultural officer.

The Chairman: I think the general answer is found in section 4, under the Regulations; the Governor in Council may make regulations, and the last item is: "generally for carrying out the purposes and provisions of this Act." Under that the regulations could provide the specifications or qualifications. So there is authority in the act to do it. How it is going to be spelled out we do not know, and, of course, you do not see the actual regulations until after the bill has been passed into law.

Senator Hollett: It does not state in section 4 what the qualifications of an inspector should be.

The Chairman: No, it merely provides that the Governor in Council by regulation may do that just as he may do any other things that are necessary to carry out the purposes and provisions of the act.

Senator Walker: Mr. Chairman, could the witness tell us what it is contemplated that the administration of the provisions of this new act will cost? There is no doubt the Government has given consideration to this matter, since the question of money is rather important these days.

The Chairman: While the witness is cogitating on your question, it occurs to me that most of the expenses that would be related to the administration of this act are expenses that would exist in any event, because the Food and Drugs division are the ones who would trigger into operation any of the provisions of this bill, and they would continue under their authority in the Food and Drugs Act to test for adulterated products. That is where the whole thing starts. That goes on in any event. They have the authority to do that, and this bill does not change that at all.

Senator Walker: There would just be more of it, I suppose.

The Chairman: They may need more inspectors. I am wondering, for instance, how they have managed up until now without the benefit of this bill and the several others we have passed. When the Food and Drugs department have told the Department of Agriculture that a particular product was an adulterated product and was within the jurisdiction of the Department of Agriculture, what happened then? And what will happen up until the time this bill becomes law and you get the benefit of its provisions? How do you investigate this thing?

Mr. Jefferson: That is a good question.

Senator Croll: I move that we report the bill.

Senator Phillips (Rigaud): Mr. Chairman, I find section 5 is a complete non-sequitur to section 3. Section 3 provides for compensation under two conditions, and the conditions are set out there. But then section 5 states that no compensation is to be made unless the minister calls upon the farmer to institute proceedings for indemnity against a manufacturer of a pesticide. It would appear that a bill like this would call on farmers to institute multifarious actions across the country and thereby negates the value of the bill. The most we should have in section 5 is that the minister should be subrogated in the rights of the farmer.

The Chairman: What you are suggesting is something the same as you have under an insurance policy in automobile claims?

Senator Phillips (Rigaud): We are told in section 4 that regulations may be put into effect to put teeth into section 3. But when we are told in section 5 to go ahead and start proceedings. The farmer may have to institute proceedings against the manufacturer.

The Chairman: If the department wants this protection then they should be able to ask the farmer for subrogation.

Senator Phillips (Rigaud): And the Crown has all the facilities for instituting the proceedings. I suggest an appropriate amendment to section 5 to provide for subrogation.

The Chairman: How does the committee feel about this? Senator Phillips has pointed out that under this bill a situation may arise where a product is not permitted to be sold

because of some order or regulation by the Department of Health. No fault lies with the farmer and therefore he qualifies for some amount of compensation. Notwithstanding that, the minister is not obliged to make the payment unless the producer or the farmer carries out certain conditions which the minister imposes. One of these is that he must mitigate the damage. Now, how the farmer could do this, I do not know. But then he could establish the condition that the farmer must pursue the manufacturer. If he has a right of action against the manufacturer, he must pursue the manufacturer. In the circumstances I have related I do not know what right the farmer would have against the manufacturer. If you have regulations by the Department of Health and the manufacturer manufactures some material according to those regulations and the farmer uses that material of product, and then the Department of Health comes along and says "we have had second thoughts; now the regulations are different and you cannot use that pesticide" then the farmer in those circumstances would not have any right of action against the manufacturer.

Senator Welch: Why would the government have any right to pay a farmer for putting poisonous foods on the market?

The Chairman: The witness has told us that this bill is not for the purpose of providing compensation where the product is spoiled for human consumption by carelessness on the part of the farmer or the manufacturer in preparing the formula. Why then do they make this a basis? I do not know what purpose section 5 (1) serves.

Mr. Jefferson: Paragraph (a) is concerned with reducing the loss.

The Chairman: In subsection (2) you partially meet the question raised by Senator Phillips. However, you do not meet it completely because that subsection says:

Where he deems it necessary the Minister may require as a condition for the payment of any compensation to a farmer under this Act, the consent of that farmer for the Minister to pursue on his behalf any legal action against any manufacturer...

That is a form of subrogation, but they are dealing with an aspect of this that the bill does not seem to cover and is not intended to cover. The bill is not intended to cover an

award for compensation for the carelessness of the farmer or the carelessness of the manufacturer in his formula.

Mr. Jefferson: But the circumstances can arise where you can have several causes for the residue, something associated with the change in tolerance levels, for example, coupled with causes that arise from the manufacturer's action or a spray operator's action, and the purpose of this provision here, and it is discretionary to the minister if he deems it advisable, is that where it appears that a part of the compensation being applied for is associated with some other cause, that rather than expend public moneys to compensate in those cases, to make sure that the compensation is obtained from the sources that were responsible. I would agree and I think I am reflecting the minister's view of this that under this provision in section 5 (1)(b) and even in section 5 (2) there would be no occasion to deem it necessary that those provisions be invoked in a straight case of change in the food and drug regulations or an error in official recommendations for use of a pesticide. It would only come into play as a way of protecting the public where there was a complex of clauses.

Senator Giguere: Who would determine if the pesticide was used properly or not? The inspectors?

Mr. Jefferson: This would be done as a result of an investigation by the inspectors to determine what was used, and how and when it was used, and this would be related to the research data available on the consequences of using the pesticide in an appropriate manner.

Senator Giguere: Their decision would be final?

Mr. Jefferson: No, I do not think their decision would be final. Any matter that is governed under Part I can be appealed under Part II to an assessor, and it is his decision that is final.

The Chairman: I should point out—and Senator Phillips (Rigaud), I think, will be interested in this—that if we look at the conditions entitling the farmer to compensation, there are only apparently two conditions. On page 2, section 3(2), one of the conditions is that the minister has received

farmer, made under the Food and Drugs Act, has disclosed the presence of pesticide residue and that the sale of that product would be contrary to that Act or the regulations made thereunder;

That is one condition that has to be met.

The only other condition, apparently, in order for the farmer to qualify, would be that the minister

is satisfied that the pesticide residue in or upon the product is not present because of any fault of the farmer,

So, if the manufacturer has been careless, that does not rob the farmer of his right to claim compensation. He only needs two things: "I did not do it, I did not cause this pesticide residue, by any fault or carelessness of mine"; and that it is an adulterated product under the Food and Drugs Act. In those circumstances I can understand why the department might want to preserve a claim against a manufacturer for supplying something that was not properly formulated; but, surely, the burden should not be put on the farmer to do it? Rather, the only thing the farmer should have to do is, at the request of the minister, give his consent and subrogate the rights that he might have.

Senator Phillips (Rigaud): I entirely agree. I think that clause 5 could be deleted completely, because it indicates specifically the duty imposed on the farmer relates to the pesticide residue; and this fits in exactly.

The Chairman: I think the rest of the bill is in order and, if that is the view of the committee, I was going to suggest that possibly we and our Law Clerk should have a good look at section 5 in the light of our discussion, and that maybe we could resume our meeting, say, at 2 o'clock to deal with this part, because we have another matter to deal with now. Is there anyone who has anything more to say on any other aspects of the bill? Are there any other questions?

Senator Desruisseaux: I was curious to know when they would pay compensation. Would they pay a farmer compensation only once, or would they repeat payments so that it could become a yearly affair with a farmer having this kind of situation?

The Chairman: In the way you have put the question there is the suggestion that the farmer might deliberately each year attempt to provide himself with some revenue.

from the Minister of National Health and Welfare written confirmation that an inspection of an agricultural product of that

Senator Desruisseaux: Not necessarily through his fault or carelessness.

Senator Cook: Does not section 5(1)(a) take care of that? If he kept doing it year after year he would not be taking steps to reduce the loss.

The Chairman: The only case in which compensation is to be provided—and, again, the amount is of course determined by the minister, and within a maximum and a minimum area by regulation—is that the product must be an adulterated product and he must have contracted or himself have used a pesticide, with no fault or carelessness on his part, which had the effect of producing that adulteration. He might do that once, but I find it difficult to see how he could fit into the conditions year after year, producing something that he knew was an adulterated product.

Senator Blois: Is it not a fact that some of these pesticides have different actions if dissolved in very hard versus soft water, or highly chlorinated water? I had some experience with this a few years ago. Can you answer that?

Mr. Jefferson: In general terms, the reaction of pesticide residues can be different under different conditions.

Senator Blois: That is what I was interested in, because I am quite certain that highly chlorinated water, with one chemical, will have a different effect and cause some of the pesticides to stick to food much longer than others.

Mr. Jefferson: This is an illustration of one of the difficulties in trying to anticipate absolutely what the results are going to be from the use of pesticides or the use of any other thing.

The Chairman: In that connection, senator, we are putting so many things in so many things—you have the chlorination of water, fluoride in water, that is supposed to be good for your teeth—that it is supposed to be certain, even by a long distance—and it must be osmosis—that if I take a shower and do not have any teeth, my teeth are still benefitting from the fluoride in the water. These are extraordinary times we live in. There is no question but that the degree of chlorination in the water varies in different parts of Canada, and I am sure in some parts of Canada at different times during the year. It may vary for a variety of reasons. How are you going to adjust the reactions of pesticides in all these

circumstances? The more you look at it, the more you realize there is a great element of good fortune in surviving so long.

Senator Walker: May I ask one question? You were very helpful in your suggestion. Perhaps the witness could now tell us what the department contemplates this would cost, if this bill is passed.

Mr. Jefferson: Yes, I did not get back to that question, sir. On an annual basis, probably the equivalent of about one man-year for administrative purposes in keeping the operation viable; and on that basis I suppose something like \$20,000, if you pay the individual a salary in the neighbourhood of \$10,000, and you have about \$10,000 of operational expenses associated with it. In terms of the amounts that might be paid out as compensation, it is anybody's guess, but I think it would be of the order of less than \$100,000.

The Chairman: In the year?

Mr. Jefferson: Yes, per year, and I hope that it would be nil, because we have in operation now, as I mentioned earlier, a co-ordinated working program to nip these residue situations before they become of significance in the market place. This is co-ordination between the provincial and federal agencies involved, surveillance of foods for residues and surveillance of the use of pesticides.

Senator Walker: If that is so, and you have it under control now and you hope it will be "nil"—there have only been five cases to date—Do you really need this bill?

Mr. Jefferson: There has been a great deal of demand for something of this nature and, as I mentioned earlier, it was felt that to have this kind of legislation in position would provide an assurance to farmers and producers that their interests were going to be protected when they followed official recommendations as to the use of pesticides. We are concerned that they do use pesticides properly, and to the extent required to produce inexpensive and wholesome food.

The Chairman: Is the committee prepared to accept the suggestion I made that we approve the bill with the exception of section 5, which we shall stand for the purpose of further consideration, in the light of the discussion that has gone on here this morning, as to whether any greater burden should be imposed on the farmer in respect of his

qualification to receive payment other than that he shall subrogate to the minister any rights he might have against the manufacturer or any other person. Is that agreed?

Hon. Senators: Agreed.

The Chairman: Then, if we are ready with the answers to this question by 2 o'clock is it agreed that the committee will meet again at that time in order to deal fully with the bill?

Hon. Senators: Agreed.

Upon resuming at 2 p.m.

The Chairman: Honourable senators, we adjourned until 2 o'clock to permit our Law Clerk to get together with the representatives from the department concerned in relation to section 5 of the bill, and while there have been discussions I cannot report that the parties have agreed on a wording which is satisfactory to them all. If the department feels that the section in its present form in the bill is essential for their purposes, we will give them an opportunity now to justify that before us. If we are satisfied, that is the end of it; if we are not satisfied, then we will discuss how we are going to change it.

Mr. C. R. Phillips (Director-General, Production and Marketing Branch, Department of Agriculture): Mr. Chairman and honourable senators, I gather that there was a bit of concern over section 5 and the authority provided to the minister to restrict payment, if you will. My explanation will be in relation to the intent of the bill. The intent of the bill is not to pay compensation where it is the fault of a manufacturer or some other person. Now in coming up with the drafting, section 3 provides in effect that you can pay, even if it is the fault of some other person, but section 5 places constraints on this. The intent, as I said, is not to pay if it is the fault of some other person, but recognizing that there may be cases where a farmer would not have the resources to take the manufacturer to court and there could be cases where there is a grey area as to whether it is the manufacturer's fault or not. That is why the words "Minister deems necessary" are in there. So this provision is there taking into account the Financial Administration Act which we have to follow that payments could be made where in the judgement of the law officers of the Crown the manufacturer was guilty or perhaps guilty and subsequently the manufacturer can be taken to court. So it was in this context that rather than putting constraints in the hands of the minister, there was put in

the hands of minister the opportunity to pay without this action yet having been taken.

The Chairman: I think I understand and I'm sure the committee does what you are saying, but if we may do a little simplification on this; under section 3(2) there are two conditions that a farmer must meet in order to be entitled to compensation or to qualify for compensation, but the Minister still has to make his decision as to whether in his discretion he may pay and he has to make a condition as to the amount. The two conditions to be met are, one, that there is some certification by the Department of Health under the Food and Drugs Act that this particular product is an adulterated product by reason of some pesticide in the product, a vegetable or whatever it may be. That is one condition the farmer or producer must meet. The second is that the Minister must be satisfied that the pesticide residue is in the product not by reason of any fault of the farmer. Those are the two conditions. Now you will notice that clearly it does not say he is not entitled if it is the fault of the manufacturer. Those two qualifications which I have enumerated are found in section 3. But then they take away from all that qualification in section 5 where they say:

No payment of compensation shall be made to a farmer pursuant to this Act in respect of a loss occasioned to him by reason of pesticide residue in or upon an agricultural product until the farmer has taken any steps that the Minister deems necessary

(a) to reduce the loss occasioned to him by reason of such pesticide residue, and

(b) to pursue any action that the farmer may have in law against

(i) the manufacturer of the pesticide causing the residue in or upon the product, or

(ii) any person whose act or omission resulted in or contributed to the presence of the pesticide residue in or upon the product.

These are conditions that are being added. Even though he qualifies and is in the door and the welcome mat is there, they say, "The manufacturer is responsible, and if you do not sue the manufacturer you do not get any compensation."

Senator Benidickson: This was Senator Cook's point this morning.

The Chairman: Yes. Under subsection 2, they really provide for a form of subrogation such as you find in your insurance policy where, if the insurance company pays a damage claim and you think you have rights that are subrogated by you, they can sue in your name and, if they are successful, you get judgment. But in subsection 2 it says:

Where he deems it necessary the Minister may require as a condition for the payment of any compensation to a farmer under this Act, the consent of that farmer for the Minister to pursue on his behalf any legal action against any manufacturer or person referred to in paragraph (b) of subsection (1).

First of all, this is complicated; and, secondly, to compel a farmer—and I do not know where he may be in Canada or how well informed he may be—to go out and take action as the basis for being able to collect any money, this is just playing ducks and drakes with the statute and any rights they pretend to be giving under the act.

I thought we reached the conclusion this morning: Yes, it was right to insist on getting a subrogation from the farmer. In other words, if the farmer-producer qualifies for entitlement to compensation, and the fault for the pesticide residue is the fault of the manufacturer, then I think the minister should have the right, as a condition of payment, to demand that the farmer sign a form of consent, which is stipulated in subparagraph 2, so that action can be taken against the person who has caused that. Why should the farmer do that? You have the Department of Health and Welfare making the order which creates the situation this is adulterated food; you have the manufacturer who may be the contributing cause for the adulteration; and the farmer, the innocent victim, the whole way down the line, and they tell him he has to do all the work. I cannot add that up and find any ground certainly why I should support section 5 in the form in which it is.

It seems to me there could be a very simple section 5. That is, if we took subparagraph 2 and used that as the main paragraph in section 5, saying, "Where the Minister deems it necessary he may require as a condition for the payment of any compensation that the farmer give his consent"—and then the minister goes ahead and prosecutes the action.

Then I added another one this morning. I thought that if the minister settles on the amount of compensation the farmer is to get

and then demands a consent from him and sues the manufacturer, he might conceivably get a judgment for a larger amount of money than the amount that he has agreed to pay the farmer, or say, "This is the amount I will pay you." I do not think that extra amount should be for the benefit of the minister, but for the benefit of the farmer.

Mr. Phillips: Is that not in here, Mr. Chairman?

The Chairman: Where?

Mr. Phillips: It is on his behalf. I thought the implication of that was that since it was on his behalf, it is only offset.

The Chairman: This is on the minister.

Mr. Phillips: I assumed it was on behalf of the farmer.

The Chairman: The doctrine of subrogation is that the person who has the right is the farmer.

Mr. Phillips: Yes.

The Chairman: So the farmer has to give a consent so that the minister can maintain an action in his name.

Mr. Phillips: In the name of the farmer?

The Chairman: That is the only way in which he can maintain the action.

Mr. Phillips: Yes.

The Chairman: When he gets the judgment, who gets the money?

Mr. Phillips: I take it, Mr. Chairman, that any excess over the compensation goes to the farmer. I am not a lawyer, but the wording...

The Chairman: The minister has the authority to say that there will be a maximum provided in the regulations, and there will be a minimum below which he will not pay anything. That is the way I read it.

Mr. Phillips: Yes.

The Chairman: If the minister says to the farmer: "I agree to pay you X dollars", and then takes action in the farmer's name and gets a judgment for X plus Y dollars, who is entitled to the Y dollars? Obviously the farmer is entitled to that amount—at least, he is in my view.

Senator Haig: But he has already been paid the compensation.

The Chairman: Yes. Therefore, you have got to make it clear as to what happens to any excess. If there was some third person who contributed to this situation, as a result of which the minister paid money to the farmer, I can conceive of the minister's getting judgment against that person who caused it.

Senator Haig: Why would the judgment be for more than the compensation?

The Chairman: It could be. The compensation that the minister pays is not necessarily the total loss of the farmer. It is a maximum amount that is provided for in the regulations as a general rule, or as a standard. It is not an assessment in a particular case. So, the judgment could well be for more money than the compensation, and if it is then I think the farmer is the one who should get the excess, because he is not making any profit on the deal even if he does get that excess.

Those are the two things I thought we were going to cover, but we have not reached any agreement.

Mr. Phillips: If I might say one thing more and then ask a question, I would appreciate it.

The Chairman: Go ahead.

Mr. Phillips: That was certainly the intent, and if subsection 2 does not say it then it should say that any excess goes to the farmer. That was the intent.

The Chairman: Yes.

Mr. Phillips: Now, the question is: If paragraph (b) of subsection 1 were not there, that makes it mandatory to pay, does it not, even if it is some other person's fault?

The Chairman: That is right.

Mr. Phillips: Does that then take it back again and say that if the minister requires as a condition of payment an authorization to pursue the matter on the farmer's behalf, and the farmer refuses, the minister does not have to pay?

The Chairman: That is right. If the conditions are (1) adulterated foods certified by the Department of National Health and Welfare; (2) a pesticide residue occurring in the product, not being the fault of the farmer; and (3) the condition that if the minister chooses

to take action against the person who caused this pesticide residue he may require the farmer to give his consent to the maintenance of an action in his name, then the farmer has to meet all three or he does not get any money from the minister. But, with all due respect to what you have explained so far, Mr. Phillips, I cannot figure out the purpose of subsection (1) of section 5, which means that the farmer cannot get any money until he has taken any steps that the minister deems necessary to reduce the loss and to pursue any action that he may have in law. I do not know what purpose that serves.

Mr. Phillips: I suppose, Mr. Chairman, it is the old story of the chicken and the egg. There is no intention that the farmer should not receive compensation from a court action. If the words in subsection 2 make it clear that there is not that intent, then that is all right, but it seems to me that subsection 2 by itself does not make it clear that it is not the intention. It implies that sometimes it is the intention and sometimes it is not, because it says "Where he deems it necessary". It implies that in some cases he will not deem it necessary.

The Chairman: In some cases he may decide that proof is difficult to establish and therefore there is no purpose to be served in incurring costs in a law suit.

Mr. Phillips: I did not pursue my point of the chicken and the egg, if I may do so now. The drafting was designed to set out that if there was a fault of any other person there would not be justification for a payment, and then to provide means so that notwithstanding that there could be an interim payment in difficult cases.

The Chairman: My own feeling is that the whole of section 5 should be struck out. There could be very simple language indicating that it is a condition of payment of any compensation by virtue of subsection (2) of section 3 that the farmer, at the minister's request, shall give consent so that the minister may maintain the action in his name, and any excess shall be paid to the farmer. I do not know what else they need say. Senator Phillips, you were discussing this matter earlier today.

Senator Phillips (Rigaud): The interim explanation of Bill C-155 was surely an affirmative indication that the purpose of the bill was to provide compensation to farmers, not the reverse, as was suggested in the informa-

tion given us a short while ago. You seemed to take section 5 as the primary purpose of the bill. If that is the case it should be section 1 in order rather than the reverse. You proceed by way of introducing the illusory concept of compensation to farmers by describing the bill as "An Act to provide compensation to farmers" and then, as Senator Hayden said, under sections 3 and 4 make clear the conditions under which he is entitled to compensation, which could, in my opinion, on that score lead to no difficulty of interpretation. Then you introduce section 5, which is completely nonconsequential, a *non sequitur* as we say in law, to the preceding section, calling upon the farmers to take proceedings. Aside from the questions of law and questions of policy, calling upon farmers to find lawyers to institute proceedings and all that sort of thing, is in my opinion leading the farming community astray about what you have in mind in respect of the purpose of this bill.

The heading to the bill is an affirmative indication of intention to compensate, not to find reasons not to compensate.

Mr. Phillips: I certainly get the point, but if I could comment I would say that I do not think the title of bills always indicates the exclusions...

Senator Phillips (Rigaud): If I might interrupt you, the titles of bills do not do so and have no legal significance, but surely you will admit that the order of the sections...

The Chairman: It is the purpose of the bill. What is the purpose of this bill?

Senator Phillips (Rigaud): That is why I referred to it.

The Chairman: The purpose is to provide pesticide residue compensation, so we provide it and take it away, or make it tough for the farmer to get it.

Mr. Phillips: As I interpret your point, Senator Phillips, you have been alerted in section 3 to the conditions under which a payment is to be made. It says, "subject to this Act". Section 5 then gives the conditions under which the payment may not be made, so, if you will, it is part of section 3.

Senator Phillips (Rigaud): If you use the words "subject to this Act" you are technically correct. You say the whole act has to be read and one should not be fooled by the indications of the heading of the bill into

thinking it means one gets relief. The basic sections 3 and 4 are intended to give relief, but they may say, subject to this act, please take a look at the last section 5 that follows 3 to 4. Surely this is a negative way of approaching a relief act.

The Chairman: Maybe I am misinterpreting the views on the committee. The way I interpret them is that they are not in favour of this section as it stands and that the committee is not in favour and there should be some revision.

Senator Haig: Mr. Chairman, under section (c) to subsection 2 by saying that after he sees the confirmation of the Health and Welfare Department that the residue is not present because the farmer must give a right to the minister to sue if he deems necessary.

Senator Phillips (Rigaud): That is what the chairman suggested as the first confirmation.

Senator Haig: The farmer knows the condition to which he can apply for compensation. In fact, he has got to meet this before he is entitled to it. If he does all those things then he is entitled to the compensation.

The Chairman: That is what I said.

Mr. Phillips: If I may ask one question related to this. If a farmer decides that he is not going to—I will put it another way—with the drafting that is suggested there is only one way he can get the payment and that is if he subrogates.

The Chairman: Three conditions.

Mr. Phillips: He may not want to. He may say, "Look here, I am going to take this man to court myself. They tell me I have got a case against him."

Senator Haig: Yet he does not get compensation from the Government.

Mr. Phillips: That is what I want to make sure.

The Chairman: He is the one that has the right to sue the manufacturer. If he does not give up that right in effect by subrogating he does not get the compensation.

Senator Phillips (Rigaud): I do not think you are going to get the confidence of farmers across the country if you are going to subject them to this type of public order.

Mr. Phillips: I am sorry if I left the impression...

Senator Haig: From the phraseology of the bill...

Mr. Phillips: I am sorry if I left the impression that the intention was to require them—the intention is to make it clear that they have an obligation in relation to faults of other persons and that this only has relation to a fault brought about through the Department of Agriculture registering a product which subsequently was found to leave residue or a provincial department recommending a product which when used according to directions subsequently left a residue either through new knowledge about the matter of harmfulness or new technology in testing.

Senator Benidickson: Or an error of judgment.

Mr. Phillips: These errors arose from lack of knowledge at the time. I am calling it technology. You can test more accurately later on. The condition is that the Government had a hand in it. It might have been a provincial government, but it had a hand in this. Therefore, there should be compensation.

Senator Phillips (Rigaud): This is precisely the point. And because it is the registration which in the final analysis leads to the use of a product, it is the Crown that has the right against the manufacturer without subjecting the farmer to instituting the proceedings.

You said a moment ago that it was the federal Department of Agriculture that registered the product which in sequence brought about the damage; therefore, the public authority that caused the registration should be the authority that has the right to complain against the manufacturer, if at all, for compensation.

The Chairman: I am glad you added “if at all” because first of all, you register the product. That is an action of the Government under this bill, registration. Now, the registration means that this product may be used. There are two ways in which a situation might arise afterwards. One would be that the manufacturer himself, in the formulation of the pesticide made some error and if he did the rights would be as between the manufacturer and the user of the product. That would be the formula. The other situation as to registration is if a product is registered on the basis of certain knowledge, which the department must confirm. Otherwise, I would assume that they would not permit it to be registered. If there was any right at all, it would be between the minister and the manu-

facturer, but I must say that I doubt if there would be any right at all there, because in the state of the knowledge at that time this was certainly known as a satisfactory product.

Senator Phillips (Rigaud): I used that expression for that very reason—“if at all”. Its purpose would be covered completely by the subrogation.

The Chairman: Mr. Pfeifer is here from the Department of Justice. Mr. Pfeifer, do you want to get into this discussion?

Mr. J. C. Pfeifer, Legislation Section, Department of Justice: Not particularly, unless there was some specific question about the actual drafting of the legislation.

The Chairman: I am not prepared to say that the problem which has arisen is a problem of drafting. I think it is a problem of what the drafting does.

Mr. Pfeifer: Yes.

The Chairman: I am sure the drafting does reasonably clearly what Mr. Phillips said was the intention. The attitude of the committee so far seems to be that that is not the right kind of intention to put into a statute in the circumstances of this case. It may be that that is getting to the stage of policy and I could understand that you would not want to answer that.

Mr. Pfeifer: Yes, it does. What has happened in this bill reflects the Government policy in those circumstances.

The Chairman: In those circumstances, I do not see any question we could ask you in this committee, unless the committee feels that there is some questions one would wish to ask. I think it boils down then to this, that we have our own view and we have tried to reach common ground with the departmental officers on a redrafting of this section. That has not been possible. What I suggest is that we instruct our Law Clerk, in the light of the discussion we have had here, to draft a section which would incorporate those views.

Senator Benidickson: With notice to the minister.

The Chairman: Yes, when we do it we will inform the department officers—you could then come in and agree with it or object to it and make whatever objection you want to make. This would not be hidden in any way.

This is the only way we can leave it. It is possible that this committee might be sitting later today. There are some bills piling up and if a couple are referred to the committee this afternoon and if we still have some time left when the Senate adjourns, if it adjourns at or before five o'clock, we might come back here and do some work for an hour or two.

Senator Haig: Whatever you want, Mr. Chairman.

The Chairman: I think we are pressing against time and we should make use of every opportunity. I suggest that we adjourn now but may resume later today.

The committee adjourned.

Ottawa, Thursday, March 20, 1969.

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-155, to provide compensation to farmers whose agricultural products are contaminated by pesticide residue, and to provide for appeals from compensation awards, met this day at 10.45 a.m. to give further consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, we approved of all parts of Bill C-155 except section 5, which, if you recall, we left for conferences yesterday. The conferences did not change the amiable relationship between the departmental representatives and ourselves, but it did not achieve any agreement. We have therefore worked out what we think should be reflected in section 5 and furnished a copy of it to the department. Perhaps I should tell you what this is. The Law Clerk and myself have been over it, and I believe Senator Phillips has seen it this morning. We propose that the first three subsections of section 5 should be struck out and in their place the following inserted:

(1) Where he deems it necessary the Minister may require as a condition for the payment of any compensation to a farmer under this Act, the consent of the farmer for the Minister to pursue any action that the farmer may have in law against any person whose act or omission resulted in or contributed to the presence of the pesticide residue in or upon an agricultural product.

Under this subsection as revised the minister has no obligation to pay an amount of compensation if he wants to sue the manufacturer of the product, for instance, in the name of the farmer and the farmer will not sign the consent to enable him to do that.

In the new subsections (2) and (3) we propose to say:

(2) Where the Minister receives, as the result of any action taken by him pursuant to subsection (1), any amount in excess of the amount paid or to be paid to the farmer in compensation, he shall reimburse the farmer to the extent of such excess.

(3) The Minister shall in paying compensation take into account any amounts realized by the farmer in any action in law the farmer may have pursued against any person whose act or omission resulted in or contributed to the presence of the pesticide residue in or upon the agricultural product.

Those are the three new subsections we propose introducing into section 5. We also recommend that the present subsections (4), (5), (6) and (7) remain.

Senator Connolly (*Ottawa West*): What I am about to say comes off the top of my head, because I was not present during all the discussion yesterday. I am thinking of the question of subrogation. Is this specifically provided for? In other words, if the minister pays the farmer, then he subrogates the farmer's right...

The Chairman: That is what subsection (1) provides. It says:

Where he deems it necessary the Minister may require as a condition for the payment of any compensation to a farmer under this Act, the consent of the farmer for the Minister to pursue any action that the farmer may have in law.

Senator Connolly (*Ottawa West*): That is the layman's way of saying he will be subrogated.

The Chairman: Yes, and if he does not subrogate he does not get any money.

Senator Connolly (*Ottawa West*): That is right.

Senator Croll: Did you not speak of excess? How do you have excess?

The Chairman: The point is that both sides agree on this that it is the compensation

which the minister might award or agree to pay to the farmer. The producer would be within the fixed limits here of minimum and maximum by regulation, whereas if the farmer were pursuing rights against the manufacturer, his claim for damages might be greater than the amount of compensation that the minister would award. The object of subrogation I take it is to enable the minister to recover moneys he has paid to that extent, but if the damage figure becomes larger that should go to the farmer, because the farmer is only being reimbursed by the minister to the extent of what the cost is.

Mr. C. R. Phillips, Director-General, Production and Marketing Branch, Department of Agriculture: To the extent of the maximum percentage and the contemplated maximum would be a percentage of the market value rather than a fixed sum.

The Chairman: So if the farmer sued the manufacturer it is quite conceivable that he might get a judgment for a larger amount than what that farmer would have received.

Senator Carter: How would that affect the farmer whose damages have been below the limit? Would they have any recourse to this?

The Chairman: If the amount of the damages determined by any formula of the kind that Mr. Phillips has indicated produces less than a minimum figure the minister does not pay anything.

Mr. Phillips: That is right.

The Chairman: But, the farmer then would have the right to sue the manufacturer if he would work out a positive action. His rights are not being taken away. The only time the minister can proceed and make use of the farmer's right to sue the manufacturer is if the minister is going to pay compensation to him.

Senator Connolly (Ottawa West): Mr. Chairman, if the minister takes an action against the manufacturer for a specific amount and the farmer feels that he has been damaged more than the amount claimed by the minister, is there any right of the farmer—they cannot both sue I suppose in different actions?

The Chairman: There are appeal provisions in this bill.

Mr. E. Russell Hopkins (Law Clerk and Parliamentary Counsel): Elaborate ones.

The Chairman: Very elaborate. If the farmer wants to question the amount...

Senator Connolly (Ottawa West): I am concerned about the position of the farmer. If the minister is subrogated in the rights of the farmer then the farmer has no position in that action, has he?

The Chairman: No, except it is being carried on in his name and he is given a consent to that. The only right he acquires is the right we provided here and that is if the minister collects more than the amount of compensation he has agreed to pay or has paid to the farmer.

Mr. Phillips: Subclause 7 may be covering the point.

The Chairman: In subclause 7 which remains it says:

Except as provided by this Act, no compensation paid under this Act shall in any way interfere with or lessen the right of an aggrieved person to any legal remedy to which he may be entitled.

Senator Connolly (Ottawa West): I think perhaps you have given me the answer. The effective subrogation simply enables the minister to make the action in the name of the farmer and subsection 7 allows the farmer to...

The Chairman: Would you like an example under subsection 7? Supposing the farmer's family or some members of the family suffered damage to their health or were injured by reason of this pesticide residue, on behalf of those members of the family there could be an action against the manufacturer if the fault...

Senator Connolly (Ottawa West): They could take that directly, could they not?

The Chairman: Oh, yes.

Mr. Phillips: There would be no need for subrogation.

The Chairman: They do not come into the problem.

Mr. Hopkins: As to the problem of compensation it is only where the minister requires as to the condition that there is subrogation. It is conceivable that there might not be and then they can sue.

The Chairman: Then the farmer is free to pursue his remedies as well as taking compensation.

Senator Connolly (Ottawa West): There is a subrogation and the minister takes the action in the name of the farmer. The minister issues his instructions to his own solicitor and the farmer's feeling is that the claim is not large enough. Where does the farmer then stand?

The Chairman: The farmer would be a witness I would say.

Senator Connolly (Ottawa West): He would certainly be a witness.

The Chairman: Without the farmer as a witness there would be some question of proving damages.

Senator Connolly (Ottawa West): Of course you would have to have the farmer as a witness, but if the claim were restricted to, say, \$1,000 and the farmer felt that there was a claim really of \$3,000 or \$4,000...

The Chairman: He has a right under the appeal procedures here to question the amount.

Senator Connolly (Ottawa West): It would have to be an appeal, it could not be in the court of first instance.

The Chairman: There are two separate procedures. One, if the farmer is not satisfied with the amount of the compensation there are provisions for appeal under the act, but if the minister—he can take those—imposes a term of payment of any compensation the farmer must give a consent so the minister can pursue these recommendations. The farmer must agree and give that consent or he does not get any compensation.

Senator Connolly (Ottawa West): I would like to clarify my own mind for the record. The fact that the minister is subrogated in the rights of the farmer and the action is decided and the award is less than the farmer thinks is proper then the farmer, himself, has the right of appeal despite the subrogation?

Mr. Phillips: He has a right of appeal under the bill.

Senator Lang: No, no.

Senator Connolly (Ottawa West): Wait a minute, somebody said no. Who has the right of appeal?

Senator Lang: The farmer made a mistake. He should not have taken compensation.

The Chairman: Wait a minute. Senator Lang, the minister settles the amounts of compensation under the bill. Now, the farmer may take it or not as he pleases.

Senator Lang: That is where the appeal is important.

The Chairman: If he says the amount is not great enough he has a right of appeal. There is no conflict between that.

Senator Connolly (Ottawa West): The right of appeal against the minister on that amount.

The Chairman: Right. This is the point. There is no conflict in the two positions as I see it.

Senator Kinley: Who pays the compensation, the Government?

Senator Connolly (Ottawa West): Yes.

Senator Kinley: Why?

Senator Connolly (Ottawa West): They are going to recover from the manufacturer.

Senator Kinley: Why do they?

Senator Connolly (Ottawa West): That is a matter of policy for the officials. Senator Kinley has a question here, Mr. Chairman. Why should the Government, he says, pay the compensation to the farmer?

Senator Kinley: Are they at fault?

The Chairman: Yes. The Government requires the registration of any pesticide and when they registered, that indicates it is a material or a product that can be used safely.

Senator Benidickson: They change the rules in midstream?

The Chairman: That is right. They may do that.

Senator Benidickson: Therefore they receive compensation?

The Chairman: Senator Kinley, your question. Registration is required of a pesticide.

Senator Kinley: Is it now?

The Chairman: Under this bill; not under the other bill.

Mr. Phillips: Under the Pest Control Products Bill.

Senator Kinley: Is the farmer limited to using anything he likes, that he thinks is good? Is he limited?

Mr. Phillips: Yes.

Senator Kinley: If he makes a mistake the Government is at fault?

The Chairman: If the farmer makes a mistake and trouble results, he has only himself to blame and he has no rights. It is only in the situation where you have registration of a pesticide.

Senator Kinley: Where he is directed by the department that the pesticide is good and that he should use it.

The Chairman: The department, it may be, later, on the basis of more information or research, decide that the formulation should be changed.

Senator Kinley: Is there a condition in the country which indicates that they should have this bill? Is there a condition like that? Is there a necessity at the present time? Is there such a condition that the farming community is making mistakes?

The Chairman: I have assumed that because the bill is here there is some necessity for it.

Senator Kinley: I lost a crop last summer, but I think it was because of the dry weather.

The Chairman: It was not a pesticide?

Senator Kinley: No, but I used a pesticide.

The Chairman: Mr. Phillips, I have exposed to you this morning what it is proposed. You have some remarks to make. Would you take the floor?

Mr. Phillips: Mr. Chairman and honourable senators, if I may speak to what the honourable senator mentioned right now, because it is an important question, it is this. Why should the Government pay, if it is the manufacturer's fault? That is an important question. That is why the bill was drafted in this fashion, that it is not contemplated that the Government should pay if it is the manufacturer's fault; but if it is in a grey area, that it would be a little difficult to prove, and so on—the way this is drafted, the minister may pay, and then take the manufacturer to court. If it is a clear case of a manufacturer's error, or another farmer's error, it is not the intent that this bill in totality should be paying anything to a farmer.

The Chairman: Now, Mr. Phillips, we were over this yesterday, on the question of intent.

The only thing we can gather with regard to intent is to read what the bill says. I pointed out to you yesterday that there are two conditions in the bill under which, if they are satisfied, the farmer is entitled to be compensated. These conditions set out in the bill are simply that the food and welfare department has said that this is an adulterated product and, secondly, the farmer is able to establish that it was not his fault, that this pesticide residue remained on the product.

Those are the two conditions.

We have added, in the form in which we have this amendment this morning, a third condition, that is, if the minister wants to sue somebody who is to blame, like a manufacturer, for the pesticide residue, then the farmer must give him a consent and must subrogate his rights so that the minister can enforce them—or he does not get compensation.

But Mr. Phillips says the intent of this bill was not to pay the farmer, not to take any obligation to pay the farmer, where the condition arises by reason of some action or neglect by the manufacturer. Those are not the conditions that are set out in the bill.

Senator Benidickson: The third point is the one brought up by Senator Phillips yesterday, that the farmer does not have to do the suing.

The Chairman: That is right.

Senator Benidickson: And go to some distance to find a lawyer, and so on, to do it.

The Chairman: If there is going to be any suing, the farmer subrogates the minister.

Senator Benidickson: And leaves it to the Crown officer to do the suing.

The Chairman: That is right.

Senator Croll: When he does get into a lawsuit, he thinks the amount is insufficient, and the Government goes ahead and collects a thousand dollars. The farmer says his cabbage was worth \$4,000. Then he still has to go back to court, for the purpose of getting that.

The Chairman: No, no.

Senator Croll: Then he goes to the minister?

The Chairman: The minister is the one who fixes the amount of compensation. If the farmer is not satisfied with the amount the minister fixes, he has a right of appeal, under this bill, to an assessor.

Senator Croll: Yes.

The Chairman: Then the situation is reviewed there and whatever the award is, either the minister's amount is confirmed or it is not confirmed.

Senator Croll: That is done before the objection.

The Chairman: It can be done at any time, independently or otherwise.

Senator Croll: If it is done before, the farmer has to know how much it is, or how is he to know what he is to say he wants to collect. It would not do for him to say he wants to collect \$1,000 and collect \$3,000; he might say he wants to collect \$3,000 and then collect \$1,000. But in this case he does not do it without a purpose.

The Chairman: In the subrogation, the farmer would give, for the subrogation application, the amount of damages that would be sued for.

Senator Croll: In the natural course of events, the farmer will always feel he is being done in and his damages claim is always higher than the Minister is willing to pay. That is a normal thing. In the end, we have the farmer saying that, anyway, he is not satisfied with this amount and that he is going to sue, anyhow. I understood that the purpose in this section—I was not here for the later discussion yesterday, so I could not follow it—was to deal with the little farmer who cannot afford to sue. Why should he—let the Government do this. He is not at fault. The Government then does it, but you do not get the farmer out of court, and you have an unsatisfied farmer.

The Chairman: You get him out of court. Under the bill, the farmer could be required to maintain an action himself, as a condition of being able to get compensation from the minister. We said that that is not right. We say that, if the minister wants to recover any amount of compensation he is paying to the farmer, he should sue whoever is responsible for creating that situation; and the only contribution the farmer can make to it is to subrogate his rights.

Senator Croll: I follow that. What does Mr. Phillips say on that?

Mr. Phillips: With respect, I would like to speak to the point you made, Mr. Chairman. I

was talking about the intent of the Government, and you were talking about the intent of the words.

The Chairman: The intent of the bill.

Mr. Phillips: In order for us to establish what the bill should say, I believe we can go back to the intent of the Government with respect to the presentation of the bill, and I was speaking to that.

The bill was drafted in a manner to provide intent, in the view of the law officers of the Crown. In the view of this committee there is some question about that.

The Chairman: There is not any question in my mind.

Mr. Phillips: There is certain discussion, and that is why I am speaking to it now. The suggestion is made that, with the amendment of clause 5, you have made three things. But the answer that was given to me yesterday was that anything within clause 5 is not providing a substantive condition. I had argued that it was, because it was part of the bill, and clause 3 said "subject to this bill"; and I say that clauses 3 and 5 are substantive parts of the bill.

The Chairman: You will not get any argument on that, certainly not from me. These sections are substantive law.

Mr. Phillips: I admitted that they are removed from one another and that you have clause 4, with regulations, in between; but they are both substantive parts.

Speaking to the amendment proposed, there are at least two things in there that are improper, in my view. One is, it removed (a) of (1); and that is designed so that, let us say that carrots had a residue on them and the food and drugs section said they may not be sold, and the farmer says he wants compensation and then the minister tells the farmer that if he washes the carrots the residue will disappear, and so the farmer washes them. That is what (a) says.

The Chairman: Which (a) are you talking about?

Mr. Phillips: About (1)(a).

The Chairman: Of clause 5?

Mr. Phillips: Yes.

The Chairman: Very well.

Mr. Phillips: It says:

(a) to reduce the loss occasioned to him by reason of such pesticide residue,

That has been removed. The second part is that in (2) or (3), the amended clause you are proposing, the minister not only must get the subrogation but must pay the costs of the action, and give the farmer the money that is collected over the amount of the compensation; and it was not the intent that this should occur. It was not the intent—I am back to Government intent now, Mr. Chairman—it was not the Government intent that the Government should pay at all, except as an interim measure, if it were the fault of the manufacturer or some other person.

The Chairman: Can we just deal with those two points, Mr. Phillips? First of all there is the question of washing the carrots and taking the pesticides off them. I read subsection (4) of section 5, which remains in, and this is what it says:

5. (4) Where a farmer realizes any amount from the disposition or use of any product or property in respect of which compensation may be or has been paid pursuant to this Act, he shall forthwith notify the Minister of the amounts so received and, if he has been paid any compensation by the Minister, shall repay to the Minister such compensation payment or part thereof as the Minister may direct.

That means, if there is pesticide residue on the carrots, the farmer makes a claim for compensation and the minister awards an amount. Then, if the farmer discovers he can wash these carrots and make use of them, the moment he does so, under section 5 (4), he is under the obligation to notify the minister. If the minister has paid compensation or has settled an amount, the minister is then in a position to determine what amount shall be deducted because the farmer has made some use of the product. To me that covers that point.

Now, with respect to the other point about the minister paying the costs, my friend must know that, as I will point out to him, when you sue and collect a judgment in damages, for example \$2,000, that is only one part of it. That is the judgment. But you also get an award of costs, that is, the taxed costs of the action. In that kind of situation the tax costs are another aspect of the judgment. The excess that is being talked about in the

amendment that we propose is the excess in the judgment. In other words, if the compensation that the minister agreed to pay to the farmer were \$2,000, and then the minister went to court suing in the name of the farmer and got a judgment for \$4,000, the excess would be the difference between the \$2,000 and the \$4,000. The costs are a plus. The plaintiff, the minister as the plaintiff subrogated to the rights of the farmer, would tax the costs and collect the money.

Senator Croll: What do you say to that, Mr. Phillips?

Mr. Phillips: Well, the Chairman raised two points. I am sorry, but I must disagree with the first point, because, although I agree with the way he put it, nevertheless, under section 1 (a) it says that the minister can tell the farmer to wash them. Under your proposal, Mr. Chairman, the farmer can say, "Maybe I will wash them." But under section 1 (a) it says he must wash them if he can get value out of them. In those circumstances he must wash them. That is the distinction. It puts it in the hands of the minister to say, before he pays compensation, that "you shall take steps that are possible to reduce the losses before I will consider compensation".

Senator Phillips (Rigaud): Mr. Chairman, speaking to Mr. Phillips, under the law, section 3, the minister may pay the amount. He is under no obligation to pay, when you go back to the basic issue as to whether the minister will compensate the farmer. Surely, if it is permissive rather than mandatory, you do not have to be concerned about whether a farmer washes the carrots or not. The minister will say, "Wash the carrots; otherwise I may not exercise my permissive right." It is as simple as that.

The Chairman: Yes, senator, this is permissive; the minister may award. If the carrots have a pesticide residue on them and the minister, on the advice he receives, knows that if you wash them properly the residue will disappear, but the farmer in making a claim refuses to wash the carrots, then the minister has a discretion whether he will pay or not pay the amount up to the maximum which he can pay, and he can reflect all those considerations in that amount.

Mr. Phillips: Mr. Chairman, it has been indicated to me that we should make in the bill things clear as to what the minister can do. Now the situation is that you do not make it clear because it is a matter of "maybe".

Senator Phillips (Rigaud): Mr. Phillips, if you are saying that that suggestion was made by me, I draw your attention to the fact that I did not make such a suggestion.

Mr. Phillips: I am sorry. I am just talking in the general sense. . .

Senator Phillips (Rigaud): With all respect, sir, you are placing in the mouths of some of the senators here alleged suggestions.

Mr. Phillips: I am sorry. If I could rephrase it and indicate, with respect, that it was pointed out to me yesterday, or in this committee, that it was not made clear in section 3 that there were three conditions and therefore we should change the bill. And now I am pointing out that in section 5 there was a point made clear and it suggested that you can do these things by an indirect means, "so don't make it clear". This is my interpretation, correctly or incorrectly.

The Chairman: May I tell you, Mr. Phillips, that in anything I have said or anything I have heard members of this committee say there has been no suggestion of the kind that in some indirect way the minister may do this, that or the other thing. The statute says that the minister "may" pay. That means there is a discretion. Then the bill also provides that there "shall be minimum and maximum amounts", and you have indicated that the likely basis would be about 80 per cent of the market value. The minister has a discretion, in the first place as to whether he will pay or not and in the second as to the amount which he will pay. He can weigh and reflect in just the same way as a court in determining the amount, if he decides he is going to pay. If the farmer will not wash the carrots, the minister will decide that the farmer is entitled to less. That is not suggesting any indirect way.

Mr. Phillips: I am sorry, Mr. Chairman. I apologize, if I left any wrong impression.

Senator Connolly (Ottawa West): I do not think anybody expects you to feel that way, Mr. Phillips.

Mr. Chairman, Mr. Phillips has not said this, but it is implicit in what has gone on; it seems to me that his concern is for the fact that there is a policy question here as to a decision the Government has taken that they would go so far. Perhaps his difficulty arises from the fact that we want to go farther than that policy suggests, and we think it improves the bill by so doing.

The Chairman: What is the policy point to which you are addressing your remarks?

Senator Connolly (Ottawa West): The question of subrogation. We think we are improving it.

The Chairman: Subrogation is in the bill as an added provision that the minister might take. But this is an observation that stands without our amendment. If the minister told the farmer to go ahead and sue the manufacturer on the basis that, if he did not sue, he would not get any money, that situation would not be good. So we took that out but we left the subrogation part of it in. We said that was enough.

Senator Connolly (Ottawa West): Yes, that is right.

Mr. Phillips: That to me was an important point. That is, that you have taken it out. The way it is written under the redraft, I admit that if the minister deems it necessary he must get the subrogation before he will pay any compensation, but, if it were a clear-cut case and, to use an example that someone else suggested, if it were a very large farmer who had money and background, it would not be the intent that the Government should do it on his behalf. He would do it himself.

This implies that you would have to pay, unless the positive action is taken of deeming it necessary to get subrogation. This is a fine point.

Senator Connolly (Ottawa West): I think Senator Phillips' point about the use of "maybe" may get you off the hook. Now I may be in a somewhat querulous frame of mind this morning, but taxed costs are one thing and counsel fees are another. We may be adding to the impost by saying that if there is subrogation and the minister takes the action that ultimately it may cost the exchequer a little money in the way of counsel fees.

The Chairman: Senator Connolly, as you know there are two scales of costs; one is on the party and party basis and the other is on the solicitor and client basis. When you go to court as a plaintiff and get a judgment, you get an award and some of these have costs taxed on a party and party basis which is a lower basis than the solicitor and client basis and the counsel fees are part of the taxed costs and it is done by an independent taxing officer who does the taxing on the party and party basis.

Senator Connolly (Ottawa West): But there is the solicitor and client aspect of it.

The Chairman: That is a problem for the minister having in mind the counsel he retains. Most likely he would use a lawyer from the Department of Justice.

Senator Connolly (Ottawa West): Yes. This might not mean any addition.

The Chairman: I do not think the ways and means are being disturbed at all.

Senator Isnor: Mr. Chairman, we have before us an amendment. Has that been approved or not by the department?

The Chairman: No, it has not been approved by the department.

Senator Isnor: Do they object to it?

The Chairman: Well, you have heard Mr. Phillips this morning. That is the extent of the objection. If I may paraphrase it, and I know I am running the risk of misstating it, the point he made was that the department did not intend in any way to pay money if the fault were the fault of the manufacturer. Therefore they have a provision in the bill which I presume would become operative where they would say to the farmer "go ahead and sue the manufacturer yourself." Our view was that that was wrong; they have a provision in the bill for subrogation, and in establishing the conditions for the provisions in clause 3 they have not included this one about the farmer having to sue the manufacturer.

Senator Isnor: Are you recommending your amendment to this committee?

The Chairman: To the extent a chairman may recommend anything to the committee. I can tell you that Mr. Hopkins and myself have worked on this and made a number of redrafts and we only took on the job because we felt that in doing this we were reflecting the view that had been indicated by most members of the committee. Now we say that this amendment does reflect the view of the committee as expressed here in connection with this section.

Senator Isnor: And do you recommend this?

The Chairman: We recommend it to the extent, as I have said, that a chairman may recommend.

Senator Lang: I will recommend it for you, Mr. Chairman.

The Chairman: We say that these proposed amendments do what appears to be the intention of this committee that this legislation should do.

Senator Lang: May we have the question then?

The Chairman: Well, it is not my intention to cut off any presentations Mr. Phillips may wish to make.

Mr. Phillips: Mr. Chairman, I believe I have made my position clear. I understand from Mr. Pfeifer that he has a slightly different view on this matter of cost from what was expressed here.

Senator Carter: Mr. Chairman, there was only one objection Mr. Phillips had. You answered the one about costs, so that has been taken care of. The legislation here only applies to excess judgments. The only other objection he raised was that the minister under the present bill could say to the farmer "you go ahead and do something before I will consider this." Now he maintains under the new amendment he cannot do that. I only see one valid objection that Mr. Phillips has raised.

The Chairman: Is that about the washing of the carrots?

Senator Carter: Yes.

The Chairman: The minister can refuse to pay if the farmer will not wash. You know the old saying: "No tickey no laundry".

Mr. Pfeifer, you wished to say something?

Mr. J. C. Pfeifer, Legislation Section, Department of Justice: Mr. Chairman, just on the issue in the proposed new subclause 2 and Senator Connolly's remarks about costs, I certainly do not disagree with the suggestion made about costs in the committee today, but the way the proposed amendment is worded does not distinguish between awards and costs. It simply says any amount in excess of the amount paid to the farmer by way of compensation would be reimbursed to the farmer. Now in my submission "any amount" would include costs or an award. The proposed amendment does not distinguish between costs and awards at all.

The Chairman: You are concerned that the word "amount" might be interpreted to mean the costs as well?

Mr. Pfeifer: To my mind, sir, it would include any amount. It is subject to this interpretation, in any event.

Senator Lang: Well then if you change the word "any" to the word "such" it would get rid of that difficulty.

The Chairman: If we are concerned about that we could use three words in place of one. We could say "any judgment for damages in excess of". What do you think of that, Mr. Hopkins?

Mr. Hopkins: Or "the amount of any judgment for damages".

The Chairman: Yes, we could say "the amount of any judgment for damages".

Mr. Phillips: Am I correct in saying that from the explanation of costs as given here, where there is a lawyer-client relationship, and the costs in that for the lawyer were in excess of the other type, that then this would be a cost against the Crown for such excess?

The Chairman: No, I did not say anything of the kind. I said there were two bases on which you tax costs, one is a party and party basis and the other is a solicitor and client basis.

Mr. Phillips: I took it that on the second basis the solicitor could get more than on the party and party basis.

Mr. Chairman: If the Crown started an action in the name of the farmer, the Crown would have a lawyer and the solicitor and client relationship would be the relationship between that lawyer and the Crown. Then if the Crown did not pay the fees the lawyer

thought he should get, he could have them taxed. They might be taxed higher or lower. But that is a fact that the Crown could control. I know the situation arises where they tell you "this is so much a day and you can take it or not."

Mr. Phillips: Whichever way it is, it is taxed as a charge against the Crown.

The Chairman: Is it agreed, in order to remove it beyond the possibility of doubt, that instead of saying "any amount" we say, "the amount of any judgment for damages"?

Hon. Senators: Agreed.

The Chairman: That removes your objection, Mr. Pfeifer?

Mr. Pfeifer: I could not say that, no.

The Chairman: Let us say on that point—because I understand you are not agreeing or expressing any approval of the section—that you told me yesterday the reason for it was that it was not in accordance with the policy decisions that were made and on the basis of which the bill was drafted.

Are you ready for the question?

Hon. Senators: Yes.

The Chairman: Shall this amendment carry?

Hon. Senators: Agreed.

The Chairman: Shall I report the bill with the amendment?

Hon. Senators: Agreed.

The committee proceeded to the next order of business.



First Session—Twenty-eighth Parliament

1968-69

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE
ON
BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

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No. 28

WEDNESDAY, MARCH 19th, 1969

To which was referred *back* the Report on Bill S-29,
intituled:

“An Act respecting the production and conservation of oil and gas in
the Yukon Territory and the Northwest Territories”.

WITNESSES:

Department of Indian Affairs and Northern Development: A. D. Hunt,
Director, Resource and Economic Development Group; Dr. W. W.
Woodward, Chief, Oil and Mineral Division, Resource and Economic
Development Group.

REPORT OF THE COMMITTEE

THE QUEEN'S PRINTER, OTTAWA, 1969

THE SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Leonard
Aseltine	Desruisseaux	Macnaughton
Beaubien	Gelinas	Molson
Benidickson	Giguère	Phillips (<i>Rigaud</i>)
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Isnor	Welch
Connolly (<i>Ottawa West</i>)	Kinley	White
Cook	Lang	Willis—(30)

Ex officio members: Flynn and Martin

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, March 18th, 1969:

"Pursuant to the Order of the Day, the Senate proceeded to the consideration of the Report of the Standing Senate Committee on Banking, Trade and Commerce on the Bill S-29, intituled: "An Act respecting the production and conservation of oil and gas in the Yukon Territory and the Northwest Territories".

The Honourable Senator Hayden moved, seconded by the Honourable Senator Langlois, that the Report be adopted now.

After debate,

In amendment, the Honourable Senator Prowse moved, seconded by the Honourable Senator McElman, that the Report be not now adopted, but that it be referred back to the Standing Committee on Banking, Trade and Commerce for further consideration.

After debate, and the question being put on the motion, it was—
Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, March 19th, 1969.

(31)

At 10:40 a.m. the Committee proceeded to further consider the Report of the Committee on Bill S-29, "An Act respecting the production and conservation of oil and gas in the Yukon Territory and the Northwest Territories" which was referred back to the Committee on March 19th, 1969.

Present: The Honourable Senators Hayden (*Chairman*), Benidickson, Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Gelinas, Giguère, Haig, Hollett, Isnor, Savoie, Walker, Welch and Willis. (18)

Present, but not of the Committee: The Honourable Senators Bourget, Phillips (*Rigaud*), and Prowse. (3)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The following witnesses were heard:

Department of Indian Affairs and Northern Development:
(Resource and Economic Development Group)

A. D. Hunt, Director.

Dr. H. W. Woodward, Chief, Oil and Mineral Division.

Upon motion, it was *Resolved* to report that the Committee had re-examined the said Report and recommends its adoption by the Senate.

A sub-committee composed of the Honourable Senators Hayden (*Chairman*), Connolly (*Ottawa West*), Desruisseaux and Flynn, was constituted to examine in detail the Bill S-17, "An Act respecting Investment Companies".

At 11:45 a.m. the Committee adjourned until 2:00 p.m.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, March 19th, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred back for further consideration the Report on Bill S-29, "An Act respecting the production and conservation of oil and gas in the Yukon Territory and the Northwest Territories", presented to the Senate, 13th March, 1969, has in obedience to the order of reference back of March 18th, 1969, re-examined the said Report and recommends its adoption by the Senate.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE EVIDENCE

Wednesday, March 19, 1969

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred back for further the consideration, the Report on Bill S-29, respecting the production and conservation of oil and gas in the Yukon territory and the Northwest Territories, met this day at 10:40 a.m. to give further consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, the Committee's Report on Bill S-29 has been referred back to this committee for further consideration. Last night the Senate, on a motion of Senator Prowse, referred the Report back to this committee for the purpose of consideration of provisions for the protection of the environment—that is, the protection of the land surface and the forestry in the areas where drilling operations, production, transportation, and processing are being carried on.

Senator Prowse, for the purpose of having the record clear, and so that we can get down to the business of dealing with it, would you make a statement as to the exact point which formed the basis of your motion?

Senator Haig: Which section are we dealing with, Mr. Chairman?

The Chairman: If we are to amend the bill then there will be an amendment to section 12 which sets out the regulatory power of the Governor in Council. I think that any amendment we make in this connection would occur there.

Senator Prowse, would you tell us what the neat point is, and then we can get down to the business of dealing with it.

Senator Prowse: Mr. Chairman, I intervened last night because I received yesterday a letter from Professor A. R. Thompson of

the Faculty of Law, University of Alberta, and who is co-author with Mr. Lewis of a definitive text on petroleum and natural gas law.

The Chairman: Yes, and to identify the other author, Mr. Lewis, he was the witness who appeared before us representing the Canadian Petroleum Association at our sitting last week?

Senator Prowse: That is right. He says that he has discussed this matter with Mr. Lewis, and that there is a difference of opinion between them. This is what he says:

There is one respect in which I consider the Bill to be lacking where Ed...

That is, Mr. D. E. Lewis.

... does not agree with me.

Section 12(q) of the Bill authorizes regulations dealing with pollution, but the Bill does not contain any provisions dealing with surface use of land or authorizing regulations requiring restoration of the surface or other protective measures for the surface. Ed's view is that Bill S-29 deals only with exploration, drilling and producing matters and therefore does not need to deal with the surface use of land. However, there does not appear to be any other territorial legislation covering the subject and therefore Bill S-29 appears to be the appropriate place for such measures. I would mention that at the present the Canada Oil and Gas Drilling and Production Regulations include a provision respecting restoration of the surface in section 16. It is doubtful whether there is any legislative authority for this regulation and Bill S-29 does not seem to cover it.

I might say that I had the impression that the report of the committee had been adopted and that the bill had been passed by the Senate, and when I entered the chamber last evening and discovered that the motion for

the adoption of the committee's report was still before the house I thought it would be appropriate to raise this matter then, rather than have it raised elsewhere. I have spoken to two officers of the department, and they are aware of the situation, and I think that the committee would probably gets its work done most expeditiously if it were to call on them.

The Chairman: And I have talked with the departmental officers, Mr. Hunt and Mr. Woodward also, and I would ask them to come forward at this time.

I think it is clear from what Senator Prowse has said that the question is whether there should be provision for the protection of the surface area or the environment. Where there are drilling operations there is a disruption of the top layer of soil, and the question is how to regulate that and make sure that somebody is responsible for the restoration or the protection of the environment.

I am going to ask these gentlemen in a moment to give their views, but it seems to me, if I might just analyze the problem, that there are two questions facing us. The first one, and the one that we are concerned with in this bill, is the protection of the environment in the area where the drilling, gas operations, processing, and matters of that kind are being carried on. There is also a much larger area, which might be the whole territorial area, where there are many operations of various kinds going on—mining operations—quite apart from those with which we are concerned here. For the moment I think we shall have to confine ourselves to the scope of the bill, and since the bill deals with drilling, production, transporting, and processing then our consideration of the environment and its protection should be in relation to the area in which these functions are being carried on, and where that kind of disturbance might take place. If this regulatory power is going to be concerned with the larger area, then it has no place in this bill. I rather think that its place would be in the Territorial Lands Act, which is a statute of general application, and one that applies to the whole territory.

As Senator Prowse mentioned there are, for instance, drilling and production regulations passed by order in council under the Territorial Lands Act, of which section 16, to which he referred, is pretty clear. The only question that can be raised is one as to whether there is any authority under the Ter-

ritorial Lands Act for regulations of that kind. I am sure that we are not going to enlarge the scope of the work that faces us here by conducting an inquiry into the Territorial Lands Act, but there is a regulation, and I shall read it in order to show you how far it goes.

These regulations were passed in June of 1961, and they are entitled "Canada Oil and Gas Drilling and Production Regulations". They are passed under the authority of the Territorial Lands Act. The caption of section 16 is: "Restauration of Surface" and the regulation reads:

The licensee, permittee or lessee shall, as soon as whether or ground conditions permit, upon the final abandonment and completion of the plugging of any well or structure test hole, clear the area around the location of all refuse material, burn waste oil, drain and fill all excavations, remove concrete bases, machinery and materials other than the marker provided for in subsection (5) of section 15 and level the surface to leave the site as nearly as possible in the condition encountered when operations were commenced.

In the language of section 16 there is ample scope to enforce protection of the environment in the area in which these operations are being carried on. The only suggestion made is that there does not seem to be any authority for that regulation. I am wondering whether we are concerned with more than the fact that there is a regulation dealing with this and that it should be part of the terms of any licence or permit that may be granted or lease made to anybody who goes in to work there.

Senator Haig: You are suggesting that under these regulations the licensee or owner has to go in and clean up the site?

The Chairman: That is right.

Senator Haig: When the order permits?

The Chairman: That is right.

Senator Haig: Why do you need permission?

The Chairman: That is a question I will ask the witnesses in a moment.

The other question is whether there is enough in the bill as we now have it to enable regulations to pass providing for restoration of the surface and protection of the envi-

ronment. Looking at the regulations in section 12, we have first of all the general regulation:

The Governor in Council may make regulations respecting the exploration and drilling for and the production and conservation, processing and transportation of oil and gas.

There is the general authority under the title "Production and Conservation". We go on with this language for a couple of pages. After saying:

without restricting the generality of the foregoing.

there follows a whole enumeration of regulations that may be made. The major one is in the most general terms, looking to conservation.

I therefore suggest that in passing regulations the Governor in Council is not limited to the particular enumerations appearing on, for instance, pages 7 and 8 respecting the different things that might be done by regulation. The regulations are not limited to these specific things. There is also the general power to make regulations respecting exploration, drilling, production and so on. I suggest that under that heading restoration of the surface in protecting the environment would be one of the things that could be regulated within the general scope.

There is one other thing I will mention now and then leave it, after which it will be open for discussion. In section 13, under the heading "Waste", in section (2) it says:

In this Act "waste", in addition to its ordinary meaning, means waste as understood in the oil and gas industry and in particular, but without limiting the generality of the foregoing, includes

and then we have the enumerations. One of the specific authorities for regulations concerning powers for conservation and powers for the prevention of waste within the meaning of this act is to be found in paragraph (1) on page 8. The word "waste" when used there is not only waste in the sense that it has or is understood in the oil and gas industry, but is waste as a generic term in its ordinary meaning. I therefore had a look at the Shorter Oxford English Dictionary, in which there are columns of definitions of waste.

For instance, one paragraph dealing with waste describes it as:

Waste matter, refuse. Refuse matter; the useless by-products of any industrial

process; material or manufactured articles so damaged as to be useless or unsaleable.

In another paragraph it means:

To destroy, injure, damage (property); to cause to deteriorate in value. To consume, use up, wear away, exhaust by gradual loss; to consume or destroy.

The broadest sense of "waste" is covered by the authority to make these regulations as well as waste as understood in the oil and gas industry.

Senator Prowse: May I just point out that the basis of the concern expressed by Dr. Thompson would I assume from my own reading of the act, be that while you may be correct in your general discussion of "waste", where "waste" appears in this act it seems to support a legal argument to the effect the word "waste" as far as the oil and gas are concerned is in the underground reservoir, and I think...

The Chairman: I do not know how you can draw that conclusion.

Senator Prowse: Without burdening the committee with a long discussion, I would only say that I am not alone in drawing this conclusion. All I can do is to say that Dr. Thompson apparently came to the same conclusion, and I respect his special knowledge in this field.

The Chairman: But the voting on that matter is 50-50 is it not? It is one for and one against. Mr. Lewis, whom we know and who has appeared before us, does not hold the same view as Dr. Thompson.

Senator Prowse: We are getting his opinion second hand. There is a split opinion. When there is a split opinion between two men who are the co-authors of what is considered to be the definitive book on the subject, it would seem to me that if it is felt this is the bill in which this should be dealt with, then we would provide much more useful legislation if we specifically spell it out in another simple phrase, giving the Governor in Council clear authority without having to deduce the authority from a lot of other things, including the dictionary.

The Chairman: But he has the most general authority in the opening words of section 12.

Senator Connolly (Ottawa West): I wonder whether it might be helpful to Senator

Prowse, in view of the discussion now taking place, to refer to paragraph (p)—“p” as in “Patrick”...

The Chairman: A happy choice this week.

Senator Connolly (Ottawa West): Certainly this week. That might come fairly close to what is in the Canada Land Act.

The Chairman: Paragraph (p) reads:

Prescribing minimum acceptable standards for the construction, alteration or use of any works, fittings, machinery, plant and appliances used for the development, production, transmission, distribution, measurement, storage or handling of any oil or gas;

Senator Prowse: I think that could probably be argued. I do not want to waste the time of the committee, because I think we can take any one of these things and, by giving it an extended meaning, come to the conclusion that perhaps it would be covered. All I am suggesting is that if it is felt desirable to have this power there we should spell it out while we have the bill in front of us.

The Chairman: I wonder if you would let us have your view on the opening authority in section 12 to pass regulations. That opening authority is:

The Governor in Council may make regulations respecting the exploration and drilling for and the production.

In connection with the drilling, there is likely to be some damage to surfaces in the area of the drilling and in the movement of supplies in the area. Under the general authority to make regulations respecting exploration and drilling, would you agree that it would be within the limits of that language to prescribe the conditions in which the area may be used and what protections must be established, and what restoration must be carried out by those getting the authority to drill?

Senator Prowse: Having read it over, I would say that it would be quite possible to give a sound opinion backed by authorities, if you had time to go over the authorities, to the effect that this was to be limited to the technical things and what they were to use in exploration. In other words, do they have to put wells down so deep in exploration, how often do they have to do it, and what type of equipment do they use? In other words, things that are limited just to that. This is all I say. There is room for two opinions but the

act is a better one if you do not have a split opinion.

The Chairman: Senator Giguère is next. I want to point this out. We have a provision in our Interpretation Act which we passed in 1967. Section 11 says:

Every enactment shall be deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

Senator Prowse: Yes, but I do not think the courts will construe that so as to interfere with private rights. In other words, if I had a right to drill I do not think that that section in the Interpretation Act would mean that you could extend a provision in an act of limited application so as to take away my property or my rights or impose upon me additional burdens that were not...

The Chairman: How do you account for subparagraph (a) of section 12, which says that “The Governor in Council may make regulations... but without restricting the generality of the foregoing, may make regulations.” Subparagraph (a) at the top of page 7 is as follows:

Respecting the licensing, drilling, spacing, locating, completing, producing, equipping, suspending and abandoning of wells.

Are there any more words that could be put in there that would bring you closer to the restoration of surface or protection of the environment?

Senator Prowse: For the protection and restoration of the surface and the environment—it is as simple as that.

Senator Cook: Paragraph (m) covers that, prevention of waste within the act.

The Chairman: I am sorry, Senator Prowse, I do not think “waste” just refers to the reservoir or to the meaning of waste in the oil and gas industry, because the definition of “waste” says that in addition to the ordinary meaning it shall have the meaning that it has or is understood to have in the oil and gas industry. It has the broadest meaning, yet the regulations which may be passed under the heading of “waste” are for the prevention of waste within the meaning of the act. That means you go to the definition of waste in the act.

Senator Prowse: They are dealing with production and drilling. There is conservation too, but they are talking about oil and gas, not surface. We could discuss this all day and not get anywhere. The point is that rather than have to get a legal opinion as to whether something is included, if we think it should be included, all we need is a simple paragraph making that fact clear. Then you do not need legal opinions or legal arguments. It takes it out of the realm of speculation.

The Chairman: I want to make a reference to another section of the bill, section 14(1) which says:

Where the Chief Conservation Officer on reasonable and probable grounds is of the opinion that waste, other than waste as defined in paragraph (f) or (g) or subsection (2) of section 13, is being committed, the Chief Conservation Officer may, subject to subsection (2) of this section, order that all operations giving rise to such waste cease until he is satisfied that the waste has stopped.

Section 13 deals with (f) respecting the designation of fields and pools and (g) as prescribing the methods to be used for the measure of oil and gas. It says other than waste as defined in those two paragraphs, why is authority under section 14 which deals with waste in the broadest sense?

Senator Prowse: Your interpretation may be correct. You could have from somebody else a completely opposite interpretation based on the statute itself and the interpretation statutes and all the other things involved when you go to argue a legal point. I am saying why leave things in the air so that you may have matters tied up in expensive litigation? Where it is desirable we should have this kind of control. All it takes is one simple paragraph and nobody has to wonder. Surely this is a simple proposition.

Senator Connolly (Ottawa West): Could I ask a question?

The Chairman: Who is wondering at the moment? I respect your opinion, but I think the point is well covered in the regulations. That is my own personal view.

Senator Connolly (Ottawa West): Earlier you quoted a regulation made under the authority of the Territorial Lands Act. Is that regulation still in existence? Will it continue to be in existence after this act is passed?

Mr. Hunt: That regulation is in existence now. It would be the intention to bring it under this act once it is endorsed.

Senator Connolly (Ottawa West): The Territorial Land Act would still continue to be in force.

Mr. Hunt: Yes.

Senator Connolly (Ottawa West): I wonder if this act has the restrictive application that Senator Prowse purports. Would he not think that in the general act it might be the Territorial Lands Act?

Senator Prowse: I would think it would be and maybe it should be covered in that act rather than in this one.

Senator Connolly (Ottawa West): I say that because of your opening statement. You say it applies not only to oil and gas, but to all other operations...

Senator Prowse: Somebody said that.

Senator Connolly (Ottawa West): On operations like mining and that might go on in a territory.

Senator Prowse: This is a Territorial Lands Act regulation. Professor Thompson is of the opinion that while those regulations are in effect they are being enforced and presumably being obeyed and that he does not find in the Territorial Lands Act adequate authority for those regulations. In other words, I interpret his opinion to be that if somebody wanted to challenge the regulations they could be set aside on the grounds that there is no authority in the act to pass that particular kind of regulation.

This is the basis of his concern and that he felt these regulations should properly be in this act. I think the department feels they have broader responsibilities beyond just this and whether they want to repeat the regulations in two acts or whether they...

The Chairman: What they may propose to accept is a matter of interest, that they would propose enacting these existing drilling and prevention regulations under the Territorial Lands Act under the authority that given in Bill S-29. It is a matter of interest that they have told us that this is what they propose to do in the first instance; but as to what the authority is under the Territorial Lands Act, I do not think that is any part of our consid-

eration, it is the authority for the Government to rescind the legislation of the kind we have before us.

Senator Prowse: If they want to have that kind of regulation under this act, I think we do everybody a favour, including the department, if we give them clear authority to do so, without having to have a legal opinion as to whether they may possibly have such a right.

The Chairman: If you are going to try to express the legislation, Senator Prowse, in a fashion that will leave no opportunity for legal opinion...

Senator Prowse: I do not believe one could get it as good as that, but I think that should be our aim.

The Chairman: That is a matter of very considerable importance and we would have to spend a lot of time on that. I suggest that perhaps we have threshed this back and forth with the departmental officers. By this time you know what the question is and from the point of view of the department they know also, as to the authority they believe they have under Part I of the regulations, to make regulations.

Have you considered this question of so-called restoration of surfaces and the protection of the environment?

Mr. Hunt: Yes, Mr. Chairman. Perhaps I should first underline that the department has become in the last few years more and more aware of the problem posed by the possibility of interfering, if you like, with the environment, particularly in the northern areas where we have a far more delicate balance, than we do have perhaps in the southern parts of Canada—and where the rate of regeneration of the surface, the growth, is much slower.

So, if I might express an opinion for the department, I think there will be no disagreement that there will have to be controls over the oil industry, in the way in which they pass over the surface and the way in which they, if you like, disturb the surface of the land and the environment generally.

I think our concern is also, as you have indicated, broader than the oil industry. We feel that whatever guidelines, whatever controls are introduced should of course apply to all activity in the north. I suppose one might say outside of the municipality, where we pretty well do disturb the surface environ-

ment. This would include of course most particularly the mining industry, and also the forestry industry and perhaps any other activities that come along. I think quite a lot of concern has been expressed recently over the possibility of damage in one of the provinces as a result of expensive open pit mining, and we are very much aware of this problem.

Our concern is really a matter of policy on which frankly I find it a little difficult to suggest anything to the committee at the moment. It is whether or not it would be preferable to have, shall I say, regulations providing for the protection of the environment made under the Territorial Lands Act that could be made, of course, to apply to anyone going on the surface of the territorial land for any purpose. I would think that perhaps the generality of the regulations under clause 12 of the present bill should enable us to extend, in part, the control of this act, if we felt it necessary. But I would be a little concerned lest we have too many authorizations in too many different places for the same thing and I wonder if the Territorial Lands Act and regulations made pursuant to it might not be the best place.

The Chairman: That would appear to be the more logical place, because that embraces the whole area and it embraces any and every matter of control to preserve and protect the environment.

This bill is just dealing with one particular phase, the oil and gas industry.

Is there any question you would like to ask the witness? We have certainly given the question a full airing. What is the feeling of the committee? Should we affirm our report as it was, or is there some other suggestion?

Senator Prowse: May I say that, having heard Mr. Hunt's statement, I am satisfied that he will bring this matter to the attention of the department. I find his statement completely satisfactory and I would therefore withdraw any objection I have raised. In other words, if there are any problems I am sure they will be taken care of.

Senator Walker: We could reaffirm the report.

The Chairman: That is, we could reaffirm the report which we originally presented.

Senator Connolly (Ottawa West): And the department will have what the witness has said.

Hon. Senators: Agreed.

The Chairman: Before we adjourn, we did have on our agenda for today further consideration of Bill S-17, the Investment Companies Act.

Mr. Humphrys was to have his opportunity to deal with, as necessary, all these submissions which were made. He has sent a message indicating that he is not in a position to do so yet. I take it that, as there were a lot of submissions they would have to be digested, and then I expect he would have to discuss them with the department and, it may be, even with the minister.

Therefore, I am not surprised that he is not ready yet. There is no pressure on us to get this bill out today, tomorrow or next week. I think all we can do is let the matter stand.

I suggest to the committee that if I could have a small working committee that might be made up of Senator Connolly (Ottawa West) and Senator Flynn and any others you might feel you might want on the committee.

Senator Desruisseaux: I would like to be on that committee.

The Chairman: Very well. Also Senator Desruisseaux. Then we could study this bill and say, on the basis of the submissions which have been made, where the errors are that we think should be removed and the parts which may be should be rewritten or altered in some fashion.

I know that, from my point of view, there are certain areas that I say are the key areas and I would expect, in the light of the submissions, that there would be changes in those areas—and I think that probably even Mr. Humphrys expects that by now.

If that is the wish of the committee, we will not be losing time, because we will do some plotting and some planning and be ready, after we hear Mr. Humphrys, to deal in a realistic way with what we think the bill should be.

Senator Haig: Could this committee after consultation among yourselves, ask Mr. Humphrys to direct his attention to those matters in particular?

The Chairman: Yes. In other words, this small committee would develop a certain

point of view in relation to some of the sections that need to be studied and the committee would be informed. In the first instance, Mr. Humphrys' attention would be directed to those, rather than to going through all the submissions—because we might have eliminated a lot that is in the submissions. I think that is a good course of action.

Senator Connolly (Ottawa West): Has this committee any authority, if it sets up this working committee and if it should decide to recommend to the plenary committee that they might need some advice, some outside help? If they wanted to go into that field, would they have any authority to do that?

The Chairman: You mean, have we authority to spend money to get advice?

Senator Connolly (Ottawa West): Yes. I understood the special committee on the Rules of the Senate did so.

The Chairman: We would have to go back to the Senate and get directions.

Senator Connolly (Ottawa West): You would have to go back?

The Chairman: Yes, and maybe we should. At least that does not mean that we will use it.

Senator Connolly (Ottawa West): No.

The Law Clerk: Two of the standing committees have already gone back to the Senate and got that—the Standing Senate Committee on Legal and Constitutional Affairs and I think the Standing Senate Committee on National Finance.

The Chairman: Well, is it the wish of the committee that we go back to the Senate and get that authority? It does not mean that we spend the money, but that we have the authority to do it. We need the advice, in any event, I think.

Senator Haig: You can bring it in your report this afternoon.

The Chairman: We will make a separate report of that. All right, that is all the business we have.

The committee adjourned until 2 p.m.



First Session—Twenty-eighth Parliament

1968-69

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE
ON
BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 29

WEDNESDAY, MARCH 19th, 1969

Complete Proceedings on Bill C-138,

intituled:

*"An Act to amend the Bretton Woods Agreements Act and the
Currency, Mint and Exchange Fund Act".*

WITNESSES:

*Department of Finance: A. B. Hockin, Assistant Deputy Minister;
S. J. Handfield-Jones, Director, International Finance Division.*

APPENDIX:

International Monetary Fund:

1. Directory.
2. Ratification of Special Drawing Rights.
3. Financial Statement.

REPORT OF THE COMMITTEE

The Queen's Printer, Ottawa, 1969

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Leonard
Aseltine	Desruisseaux	Macnaughton
Beaubien	Gelinas	Molson
Benidickson	Giguère	Phillips (<i>Rigaud</i>)
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Isnor	Welch
Connolly (<i>Ottawa West</i>)	Kinley	White
Cook	Lang	Willis—(30)

Ex officio members: Flynn and Martin

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, March 19th, 1969:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Martin, P.C., seconded by the Honourable Senator Langlois, for the second reading of the Bill C-138, intituled: "An Act to amend the Bretton Woods Agreements Act and the Currency, Mint and Exchange Fund Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Hayden moved, seconded by the Honourable Senator Langlois, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, March 19th, 1969.

(32)

At 4.45 p.m. the Standing Senate Committee on Banking, Trade and Commerce met to consider Bill C-138, "An Act to amend the Bretton Woods Agreements Act and the Currency, Mint and Exchange Fund Act".

Present: The Honourable Senators Hayden (*Chairman*), Aird, Benidickson, Burchill, Carter, Connolly (*Ottawa West*), Desruisseaux, Flynn, Gelinas, Giguere, Haig, Isnor, Kinley, Martin, Phillips (*Rigaud*), Welch and Willis. (17)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The following witnesses were heard:

Department of Finance:

A. B. Hockin, Assistant Deputy Minister.

S. J. Handfield-Jones, Director, International Finance Division.

It was *Agreed*, that the membership of the International Monetary Fund, a list of members who have ratified the Special Drawing Rights and the Financial Statement of the I.M.F., be printed as an Appendix to these proceedings.

Upon motion, it was *Resolved* to report the said Bill without amendment.

At 5.50 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, March 19th, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill C-138, intituled: "An Act to amend the Bretton Woods Agreements Act and the Currency, Mint and Exchange Fund Act", has in obedience to the order of reference of March 19th, 1969, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE EVIDENCE

Ottawa, Wednesday, March 19, 1969

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-138, an act to amend the Bretton Woods Agreements Act and the Currency, Mint and Exchange Fund Act, met this day at 4.45 p.m. to give consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, I would call the meeting to order. We have before us for consideration Bill C-138 and Bill C-157, and for further consideration, section 5 of Bill C-155. I would suggest that we commence with Bill C-138, the Bretton Woods Agreements Act. Is it the view of the committee that the proceedings should be recorded?

Senator Flynn: Yes.

Upon motion, it was *resolved* that a verbatim report be made of the proceedings and that 800 copies in English and 300 copies in French be printed.

The Chairman: From the Department of Finance we have Mr. A. B. Hockin, Assistant Deputy Minister. With him are Mrs. S. J. Handfield-Jones and Mr. B. D. Lister.

I would suggest, subject to what the committee has to say, that Mr. Hockin might give us in outline form the substance of this bill which proposes certain changes in the Bretton Woods Agreements Act. Would you take over Mr. Hockin?

Mr. A. B. Hockin (*Assistant Deputy Minister, Department of Finance*): Thank you, Mr. Chairman. The bill itself is very complicated, as honourable senators will have seen from the document which has been distributed. The main idea is quite a simple one, however. It provides for the Parliamentary authority which Canada needs to accept the amendment to the articles of the agreement of the International Monetary Fund which empower it to create and allocate to its members Special

Drawing Rights. These special drawing rights are essentially a new kind of international reserves. They will serve the same purpose as gold and reserve currencies, but they can be created deliberately by international action as and when they are needed. Thus for the first time it will be possible to exercise deliberate international control over the amount of international liquidity in the payment system. That is the essential purpose of this bill.

The method by which this is to be done was the subject of long and detailed negotiations beginning first of all with the group of ten, which is the ten most industrialized countries in the world, who had met together to provide supplementary resources to the International Monetary Fund and then was taken up by the study by the Executive Board of the International Monetary Fund itself, and then the two bodies came together for joint meetings, and finally the scheme was submitted to the governing body of the International Monetary Fund which consists of governors from each of the 108 member countries. In our case the governor is the Minister of Finance. That body agreed in general on the changes which were proposed. They were subsequently worked out by the Executive Board of the International Monetary Fund and submitted to governments for their approval. The form of the approval is what we are now going through here, that is approval by parliaments of the details which have been negotiated.

Senator Connolly (*Ottawa West*): Would it throw you off too much if I just asked a question in the meantime? If you do not have the information now we can get it later. Can you tell us what are the countries composing the Group of Ten?

Mr. Hockin: Yes, the countries in that group are the United States, Canada, Japan, the United Kingdom, Germany, France, Italy, the Netherlands, Belgium and Sweden. Switzerland, although not a member of the International Monetary Fund, sits in on all the meetings and is very closely associated with the work of the group of Ten.

The bill before us does two things; it proposes amendments to the Bretton Woods Agreements Act which follow the changes negotiated in the way I have just outlined to you and also provides for an amendment to the Currency, Mint and Exchange Fund Act.

To deal with the first of these, the amendments to the Bretton Woods Agreements Act, we find, one, that it provides for additional sections to the Bretton Woods Agreements Act in which are spelled out the methods by which these new special drawing rights are to be created and dealt with within the framework of the International Monetary Fund, and secondly it provides amendments to the existing articles as they presently stand. I should say they are ancillary agreements flowing from the additions which have been made to separate the various accounts in the International Monetary Fund, and secondly to make some changes in the International Monetary Fund as it originally was to give effect to additional agreements that had been reached between the countries when they were negotiating the SDR scheme and to make special changes in other sections of the IMF necessitated by the changes in the SDR by a kind of parallel change in other sections of the IMF or to spell out such things that had not been sufficiently clear before or on which various countries had wished to make changes which had been agreed to as part of the package deal which included the SDR.

That is the basic nature of these amendments to the Bretton Woods Agreements Act.

The Chairman: I do not wish to interrupt you, but could you take one the countries, Canada, and show how these changes would apply?

Mr. Hockin: Yes. In essence the new special drawing rights are the creation of what we tend to call unconditional liquidity. That is to say they form an account established at the IMF on agreement among the participating countries according to which each member country will be allocated on the books of the IMF so many units of the new special drawing rights.

These units of account will be available to that member country on demand, on the basis of balance of payments need, to enable it to buy from other countries their currencies which they can then use to meet their payments requirements. Just as we presently would use gold to buy, we will say, United States dollars, if we did not have enough to intervene in the exchange markets to support

the value of the Canadian dollar, so we will be able to use the special drawing rights to purchase currencies which we need to intervene in the exchange markets to make our payments.

The Chairman: Do I understand you correctly that you have a unit bank or a bank of units and then you parcel them out on request, according to balance of payments need?

Mr. Hockin: They are parcelled out in accordance with quotas already negotiated in the International Monetary Fund. They are based not just on need but on the result of the application of a rather complicated formula which includes population, Gross National Product, trade—all that sort of thing.

Senator Connolly (Ottawa West): Contributions?

Mr. Hockin: The contributions flow from the amounts which are made...

The Chairman: No, that is not what Senator Connolly means. Do you arrive at the percentage of sharing in these units on the basis of the contributions a country has made?

Mr. Hockin: No, you cannot by mere quota in the IMF. You have to have it justified on the basis of this formula which is related to size of country, its economy and position in world trade, and what-have-you. When it achieves its quota it has to make a payment in, partly in the form of gold and partly in the form of its own currency in the form of non-negotiable demand notes, as it were, which can be used when the Fund needs to. That is the way your normal quota on the IMF works.

Senator Aird: I would like to ask Mr. Hockin how this is related to the weighted voting factor. What is Canada's percentage in the weighted voting factor?

Mr. Hockin: The voting is related directly to the size of the quota allocated in the IMF, and in our case it is 3.19 per cent of the total.

Senator Aird: What is the weighted voting factor for France?

Mr. Hockin: It is 4.21.

Senator Aird: What combination of European Common Market countries could come

to more than 15 per cent in order to defeat this 85 per cent control figure?

Mr. Hockin: It would really require all the Common Market countries to do so.

Senator Phillips (Rigaud): All the countries, including Germany?

Mr. Hockin: All the Common Market countries. You might be able to get by with one of the small countries.

Senator Aird: Mr. Chairman, I think it would be useful if we had a list of the countries as it relates to this veto power.

Mr. Hockin: Mr. Handfield-Jones tells me, with regard to the Common Market countries, that you would have to have France, Germany, Italy and two of the smaller countries operating together to exercise the veto. They would require that number to exceed the 15 per cent which would give them the veto.

Senator Aird: What is the position of this legislation before the parliament of France?

Mr. Hockin: They have not moved in France.

Senator Aird: What is the position as it relates to Germany?

Mr. Hockin: Germany is seen coming close to it, but I do not believe they have yet started their implementation, have they?

Mr. S. J. Handfield-Jones, Department of Finance: Mr. Chairman, the latest information we have is that the bill to provide authority for ratification by Germany has passed the German Parliament, and it now awaits signature by the president, but that has been held up by the presidential elections. However, the parliamentary proceedings have been completed.

Senator Aird: Has it passed any of the parliaments of the European Common Market countries?

Mr. Handfield-Jones: It has not yet been recognized by any of the Common Market countries.

Mr. Hockin: The lists that are provided periodically do not include any of the Common Market countries, but they do include the United States and the United Kingdom.

Senator Connolly (Ottawa West): What are their percentages? Have you that information handy?

Mr. Hockin: The United States is 21.61 per cent, and the United Kingdom is 10.27 per cent. Australia has already ratified it. A number of African and Latin American countries have also ratified it, as has Norway, Sweden, New Zealand, India, Israel, Indonesia, Iceland—we can provide you with a list, if you like, senator.

Senator Aird: My understanding is that 37 countries have signed. How does that affect the weighted voting power.

Mr. Hockin: We now have 52.85 per cent of the required votes.

The Chairman: It would be a good idea, I think, to have this list of the various countries that have ratified the agreement so far, and from which the witness has been reading, printed as part of our proceedings. There was also another list that we mentioned earlier concerning the voting.

Senator Connolly (Ottawa West): The weighted voting power.

Mr. Hockin: Yes, we can give you a copy of that.

Senator Aird: I have one last question, Mr. Chairman. Do you really think, Mr. Hockin, that the United States loses its veto?

Mr. Hockin: No, it does not lose its veto. It shares its veto with the Common Market countries.

Senator Aird: I just wanted that on the record.

The Chairman: Do you wish to continue?

Senator Connolly (Ottawa West): It does not lose its veto because it has 21.61 per cent.

The Chairman: But there are other combinations that may affect that.

Senator Connolly (Ottawa West): That is right.

Mr. Hockin: The other section of the bill to which I would refer is that which amends the Currency, Mint and Exchange Fund Act. This provides the reciprocal to the allocation to Canada of the new special drawing rights that will be available to us when we need them to buy the currencies of other countries. The reciprocity occurs in that we must undertake to accept from other countries their holdings of special drawing rights in return for our currency or holdings, shall we say, of United

States dollars, to enable them to get currencies which they need to intervene in the exchange markets when they are in difficulty. The amendments to the Currency, Mint and Exchange Fund Act provide the authority for us to accept and hold the special drawing rights which we will be allocated in the original allocation, and which we may get from other countries in return for our holdings of currencies.

The Chairman: I suppose the need in a particular country for our currency would not necessarily be related to the balance of payments as between that country and our country.

Mr. Hockin: No, not at all.

The Chairman: So we may be contributing to facilitate international trade relations and adjust the balance of payments between two or three other countries?

Mr. Hockin: Yes.

The Chairman: Where do we come out at the end of that?

Mr. Hockin: There are limitations upon the size of the holdings of SDR's that we must accept from other countries, and these are multiples of the original allocation. For example, if we are allocated 100 units we could end up having to hold 300 units. We could, if we wished, go beyond that.

The Chairman: What is the machinery, if any, for cashing in on these units when we have taken them?

Mr. Hockin: We can use them only for our own balance of payment needs. However, there are requirements for countries, as they improve their balance of payments position, to restore their holdings, and in that way they will be buying them back from us, as it were, in the process. There is a continual process of countries drawing currency from others in return for SDRs and then either buying their own currencies drawn by somebody else and getting SDRs or buying back the SDRs in response to the requirements of the scheme.

The Chairman: If Canada has a substantial number of SDRs and does not have a balance of payments need, what does it do with them?

Mr. Hockin: Other countries would be expecting at various times, as their balance of

payments position improves, to seek to re-acquire SDRs, and if we had a very high holding they would be directed to us by the IMF in the management of the whole account, so countries would come to us to re-acquire SDRs.

The Chairman: Is that the only way in which we can shed them, if some other country wishes to re-acquire them or if we use them in connection with our own balance of payments? Is there any other way?

Mr. Hockin: You mean any way in which we can say, "We have got too many of them. We do not want so many"?

The Chairman: That is right.

Mr. Hockin: We cannot be asked to take more than a certain number; that is the limit of two over one. We may accept more than that if we wish, but we cannot be forced to accept. Up to that moment it will depend upon the workings of these agreements for re-acquiring the units by countries whose balance of payments position has improved, or by drawings by countries, by our drawings of other countries by the sale of SDRs.

The Chairman: Let us work on the assumption that re-acquiring by other countries because they improve their balance of payments does not work immediately. Canada may have increased her holdings of SDRs, and then I would take it she just has to sit with them or use them in connection with her own balance of payments as the situation occurs?

Mr. Hockin: Essentially that is the case. We have tried to make the holding of them as attractive as possible. They carry a rate of interest. They have, of course, a gold value guarantee, so they have some of the characteristics of both gold and reserve currencies.

The Chairman: All I am thinking of is that, even if they have an interest rate and are gold backed to some extent, if my access to a place where I can convert them is limited I am just sitting there with them and drawing interest.

Mr. Hockin: You are sitting there and drawing interest, but knowing you can cash them in whenever you need to. You cannot change the composition. You cannot just, as it were, deal in SDRs because you want to change the composition of your reserves. That is in the rules of the game.

Senator Connolly (Ottawa West): Suppose you bought SDRs because you were in imbalance with the United States and their balance of payments problem was serious, but it was United States dollars you needed and you were sitting there with this large amount of SDRs. What would the outcome be? I suppose you would be forced to take a credit in some other foreign currency.

Mr. Hockin: Which would then be converted at our request into United States dollars.

Senator Connolly (Ottawa West): Providing that other foreign countries held a surplus of US dollars.

Mr. Hockin: No, we might be able to use this system to buy in the market place through the International Monetary Fund. The currencies which we could buy must be convertible currencies so that we can in fact use them, either directly or indirectly. If we do not have dealings in our own currency exchange—we will say Portuguese escudos and we drew Portuguese escudos—we would make arrangements either with the Portuguese exchange authorities or through the International Monetary Fund to transfer those escudos into US dollars which we could use in our exchange markets.

Senator Connolly (Ottawa West): Would you get those US dollars from the Portuguese or would you get them from the International Monetary Fund, or would you acquire them in the market?

Mr. Hockin: It would depend on the circumstances at the time as to whether they had US dollars and they were prepared to sell to us, so that we would always be assured of getting the currencies we needed.

Senator Connolly (Ottawa West): I see. You could give us that assurance?

Mr. Hockin: Yes.

Senator Burchill: Would it affect the SDR to strengthen the weak currencies at the time of a crisis?

Mr. Hockin: It would have the effect of making available to them quick liquidity which they could use to intervene in the currency market to support the value of their own currency.

Senator Carter: Is that gold backing you are referring to? Does that mean you cannot convert them into gold?

Mr. Hockin: Excuse me, I said they were gold value guaranteed. That is a short-hand way of saying that the value of those units in terms of gold was assured and that one unit of gold equals so much SDRs and that would be maintained. It is a way of making sure that the changes in par values of other currencies would not affect the value of the SDRs so that they have the same value in terms of other countries that gold had at the beginning of the exercise.

Senator Phillips (Rigaud): The SDR really means our own gold standard. Is not that the fact?

Mr. Hockin: They have the gold used as a standard of accounting to maintain the value of the SDRs.

Senator Phillips (Rigaud): To the layman, that means it puts the SDR on those standards?

Senator Connolly (Ottawa West): Further to the layman's position, really what the scheme is and correct me if I am wrong, is a system which provides certain credits for countries who are in difficulty because of international payments and under this scheme they have the right to resort to these credits to tide them over during a time of crisis?

Mr. Hockin: That is correct, senator.

Senator Carter: When you started out you spoke by saying that this is a device to give more international control of international liquidity, but is not it also a device to sort of get some control or speculation in gold?

Mr. Hockin: To the extent that gold speculation arises from the concern around the world, that the present level of reserves available to countries is inadequate and that somehow they are going to have to increase the amount. They feel it is likely to come about through an increase in the price of gold. This is right, because to the extent that we say to them, here is a substitute or here is a supplement so that you do not have to rely upon increases and the volume of gold held in international reserves. You do not have to rely upon the deficits of the reserve currency countries to supply US dollars or sterling to other countries to hold as their reserves. You can create this new unit of account as it were and to the extent that this reassures them that the international system is going to be able to operate smoothly and provide the liquidity that countries feel they need. Of

course then they will be less concerned about the gold problem and this should have the side effect of reducing speculation in gold.

Senator Isnor: This fund has been in operation, I think, for 25 years?

Mr. Hockin: Yes, the International Monetary Fund has been in operation for 25 years.

Senator Isnor: Do they present an annual report?

Mr. Hockin: They do, senator. There is an annual meeting of the International Monetary Fund, to which all the governors go, including the Minister of Finance. At that annual meeting they discuss, or there is available for discussion, their annual report. We have a copy here. I am sure there are copies in the library, but we can make sure there are. If you would like a copy, we can make it available.

Senator Isnor: I think it would be nice to have it on record, last year's report.

The Chairman: This is the 1968 annual report? You can file a copy of that?

Mr. Hockin: Certainly.

Senator Isnor: I am not asking for the whole report, just the balance sheet.

Mr. Hockin: You want just the balance sheet?

Senator Isnor: Yes.

Mr. Hockin: We can give that

Senator Connolly (Ottawa West): And have it put on the record?

The Chairman: Yes.

Senator Isnor: I think you said the interest rate was $1\frac{1}{2}$ per cent, for bond?

Mr. Hockin: That is right, the holdings.

Senator Isnor: What is the charge to borrowing countries, what is the rate?

Mr. Hockin: It is the same rate both ways, exactly, senator.

Senator Isnor: It is $1\frac{1}{2}$ both ways?

Mr. Hockin: It is $1\frac{1}{2}$, both ways.

Senator Phillips (Rigaud): On page 11 of the bill, where you have the unit of value, in clause 11, it says:

The unit of value of special drawing rights shall be equivalent to 0.888 671 gram of fine gold.

For the uninitiated, if there were a breakdown in the two tier system in the price of gold, have you provided for the necessary flexibility as to how to determine the dollar value of the unit.

Mr. Hockin: That is the present gold content of the United States dollar and if there were a change in the United States dollar price of gold there would be a change in the rate between United States dollars and the SDR. It would follow gold.

Senator Phillips (Rigaud): I appreciate that, but is there flexibility at present in the bill, to provide for that adjustment?

Mr. Hockin: No.

Senator Phillips (Rigaud): It would flow?

Mr. Hockin: Yes, it would flow exactly with the price of gold, senator. That is the point of the gold value guarantee.

Senator Phillips (Rigaud): I see that. It is the value. The unit value is equivalent to so much fine gold.

Mr. Hockin: That is right.

Senator Phillips (Rigaud): We know the price of so much fine gold in terms of the United States dollar. I see. If the United States dollar value changes, the unit value changes.

Senator Connolly (Ottawa West): In view of the fact—and this arises out of the question by Senator Phillips (Rigaud)—that you have the present value of the U.S. dollar there in gold terms in the legislation, if there is a change in that, does this mean that that section of the bill would have to be amended by another bill?

Mr. Hockin: No, senator. It would mean that the relationship between the U.S. dollar and the SDR, as it were—you could say the exchange rate between those two—would be affected exactly in the same way as the relationship between the U.S. dollar and gold would be affected.

The Chairman: I presume the variations in exchange would be reflected in what this constant quantity of gold would sell for?

Mr. Hockin: Yes.

The Chairman: Senator Isnor. I think we interrupted you in your questioning.

Senator Isnor: I have one other question, in connection with the other one. Could we have a list of the countries involved, showing the amounts, over the past three years? Would that be possible?

Mr. Hockin: We can provide that for you senator, but we do not have it here.

The Chairman: Actually, I thought perhaps the balance sheet would be printed as an appendix as well as this list with the various countries, the status of acceptances and also what you have just asked for, senator.

Senator Isnor: It was suggested by Senator Connolly (Ottawa West) that it might be made for the last three years.

Mr. Hockin: That is fine, and that will be countries and amounts.

The Chairman: Now, would you like to pick up where you left off or have we made you lose your place?

Mr. Hockin: I think I pretty well finished the summary, Mr. Chairman. I really had reached the place where I said that the amendment to the Currency, Mint and Exchange Fund Act really provides the authority where Canada can accept and hold these SDR's, which is the authority given to us to fulfill our undertakings in the agreements embodied in the act.

The Chairman: That is just on the last page of the bill.

Mr. Hockin: That is right.

Senator Carier: Is it correct to assume that we are bound by the agreements under this act to accept up to the 200? We do not have any choice in that, but have committed ourselves to accept up to 200 units in addition to our own allocations?

Mr. Hockin: That is right.

Senator Pearson: Is there a set term of repayment of borrowings?

Mr. Hockin: In the agreements there is a plan by which countries, as it were, can only use SDRs to a certain amount on average over a certain number of years and that they must restore their holdings in this way. So that there is in fact a series of rules which affect the way in which countries have to, as you put it, repay.

Senator Pearson: Suppose they cannot meet these terms?

Mr. Hockin: Well, I think, if a country were in that position, you would probably find that it was having to use the other resources of the IMF, the conditional drawing, and in those circumstances they probably would be dealt with in that way.

The Chairman: For instance, you may find that a country is in difficulties and in need of drawing for purposes of balance of payments. It may be using, internally, certain mechanics for the purpose of improving its trade position to the detriment of the other people who may be part of the contributing force. What supervision is there of the conduct of a country which makes these drawings for the purpose of balance of payments?

Mr. Hockin: In terms of the broad generality of the membership, Mr. Chairman, the International Monetary Fund has regular annual consultations with each member in which they go, in considerable detail, into the internal policies of the country, having particular regard for those policies which bear on the well-being of other countries. They comment on them. They comment in secret. Those comments are not made public. They are frank; they are full. We believe that they have considerable influence on the conduct of those countries.

If, of course, the country has made a drawing under the other part of the IMF, then this is the conditional part of the fund's credit, and in return for the drawing which it makes over and above the first, what we call the gold tranche, the country may be asked to accept certain conditions which bear upon their own conduct, and this is another way in which we all have some influence on each other's behaviour. Then, within the group of ten countries, there is a much more frequent consultation, though not necessarily through the meetings of the group of ten as an organization so-called the Group of Ten Countries. But the same countries belong to the working party on the balance of payments under the umbrella of the OECD, Paris, and meetings of that group take place every five, six or seven weeks, and...

Senator Benidickson: Is Canada a member of that group?

Mr. Hockin: Yes, Senator Benidickson, Canada is a member of that group, and at those meetings there is opportunity for very

thorough exchange between representatives coming from the home capitals of each of those countries, and once again there is an opportunity here for us to influence the actions of others in their own domestic economies and fiscal and monetary policies and so on, so that we are achieving through this consultative means more influence over the countries which themselves can effect our economies through our balance of payment relations with them.

The Chairman: Is there a general underlying agreement to which various countries have subscribed as a term of which they would implement their undertaking by parliamentary action? In other words, I am looking for the source from which the contents of this bill came. It must have been put in some statement form and maybe in some agreement form. I was wondering whether it went along somewhat in the way in which the international agreement on trade and tariff went where there is agreement and common understanding and then there is parliamentary implementation.

Mr. Hockin: The actual text you find in here, senator, comes from the proposed amendment of the articles of agreement which were agreed upon by all the countries which met together at the IMF annual meeting.

The Chairman: When you say all countries that met, how many countries would that have been? Was everybody represented?

Mr. Hockin: There are 108 member countries and while they did not all agree, a sufficient majority did so that they were able to give instructions to the Executive Board to work out all the detailed amendments, which they did, and proposed them in a report to the governors and then sent them back to countries in this same detail so that they could take whatever legislative action was necessary to give effect to this agreement.

The Chairman: The agreement really represents the sum total of the effort of the majority of the members of the fund?

Mr. Hockin: That's right.

Senator Connolly (Ottawa West): In other words, all the other countries who are signatories to the agreement will be passing the same legislation that we are asked to pass.

The Chairman: I did not understand that anybody had signed anything.

Mr. Hockin: Nobody signed anything.

Senator Connolly (Ottawa West): Well then I withdraw what I said about signatories.

Mr. Hockin: What they are doing is when they have passed the legislation or whatever is necessary in their own system they will be in a position to ratify the agreement by depositing their signatures.

Senator Connolly (Ottawa West): Presumably it will be at least substantially if not actually in the form of the legislation we have before us in all the other countries?

Mr. Hockin: All the operative parts must be exactly the same because it is a negotiated agreement.

Senator Flynn: Equivalent to ratifying a treaty?

Mr. Hockin: This is right.

Senator Connolly (Ottawa West): Except that it has not been signed.

Now I come back to the domestic arrangements which are needed to correct any country's exchange fund difficulties. Now this fairly often happens, and we have had it in this country where to preserve our position and save foreign exchange, we have enacted legislation prohibiting the import of certain products from certain countries. That, of course, is all to the good, perhaps, but in the light of these new arrangements with the special drawing rights available under the IMF, is that process likely to continue to the same extent as it has in the past, or will resort rather be had to the special drawing rights, if the country in difficulty has sufficient drawing rights to correct its problem?

Mr. Hockin: Senator, I think that the direction that we have all been moving in is that we have attempted to improve the process by which a country's domestic policies, taken altogether, will restore equilibrium in its balance of payments, hopefully without having to resort to controls on either imports or movements of capital. This is the objective.

The problem there is that it takes time for domestic policy measures to show their effects on the balance of payments. The smaller a country's reserves are, the less time it has to have its domestic policy changes show effect before it runs out of reserves.

The purpose of adding liquidity to the system is to give it more time to do so. There are two ways in which we do it. One of them

is by allowing them to hold more unconditional reserves, reserves which they can use as they see fit, when they see fit. We have no control over the country's holdings of gold and reserve currencies; that is up to them. We do now hope to provide a supplement in the form of these SDR's, which will be, in their minds, equivalent to holdings of gold and reserve currencies which they know are there and they can show in their reserves and can spend when they need to. We also think they will go on requiring conditional credit from the IMF and other things in order to give them the time necessary. The more they need, the more they will have to rely on the conditional credit from the IMF, and this will give us a chance to lay down the kind of conditions that are likely to bring back that balance of payments equilibrium. But the hope is that countries will try to improve their own balance of payments through appropriate domestic policy changes, and rely as little as possible on the imposition of these controls on the movement of goods and capital, which we had in such proliferation immediately after the war.

Senator Connolly (Ottawa West): I am sorry to hear you say that, and I will tell you why. We might, for example, in this country find ourselves in difficulty because we are short of U.S. dollars, and we might have a great demand, as we do in certain seasons of the year, for tropical products, not necessarily that have to be brought in from the States but that could be brought in from some underdeveloped countries.

It seems to me it would be highly preferable for us, if it were a temporary situation, not to restrict the importation of those products, and thereby try to correct the situation by domestic action, but rather to apply to the fund to use the SDR's, and to continue our trade, particularly with these countries that need to sell their tropical products.

The Chairman: And which have a need for exchange.

Mr. Hockin: Well, senator, I think we would not likely be in an overall balance of payments difficulty without being in such a situation that we would require to have internal measures taken. For example, we could well have, as we traditionally have, a considerable balance of payments deficit with the United States, but at the same time have a surplus with other countries, the totality of which leaves us in a viable position, taking into account our current account plus move-

ments of capital, so that we do not think of balancing our trade or our balance of payments relationships with individual countries. We look at it in the aggregate when we are considering whether we are in balance of payments disequilibrium or not, or whether we are in overall balance of payments trouble or not. All I am saying is that instead of trying to deal with that as countries used to deal with it by quickly putting on exchange controls and import restrictions, we are trying to move to the place where they do not have to do that; to the place where, in fact, they can go on accepting imports from other countries without putting on these controls, and they can deal with their problems by appropriate changes in their fiscal and monetary policies which will restore equilibrium to their overall position. The role which both the conditional credit and the SDR's play in this is to give them the time in which to enable them hopefully to correct the situation without having to put on restrictions.

The Chairman: Mr. Hockin, I was wondering if you have with you what I would call your informed crystal ball, and whether you can project any estimate as to when, if at all, you are likely to have this bill the effective policy of the international monetary fund? In other words, I am asking you how soon, if at all, do you think the required number of countries will pass this legislation?

Mr. Hockin: It was hoped, Mr. Chairman, that by the summer sufficient countries would have ratified the agreement to bring the scheme into effect, as it were. That does not necessarily mean that you would immediately have the creation of SDR's, because that is the second stage, or the so-called activation stage. Of course, you cannot contemplate that until you know that the thing is in place. But, we are giving advance thinking to the problem of activation—as to when it should be activated, and how much should be activated, as it were—but we do not know when this will be. I would hope that by the end of the year there will be some more concrete action.

Senator Willis: Mr. Chairman, you asked a question that anticipated mine. I should like to ask you, Mr. Hockin, how many countries have passed the required legislation to date.

The Chairman: We filed a statement before you arrived, Senator Willis, and it will be part of today's record.

Mr. Hockin: Roughly, 37 countries have signed, and they represent 52.85 per cent of the weighted voting power.

Senator Willis: That is the same as on March 10. The Leader of the Government gave us that figure.

The Chairman: Yes, there has been no change. Are there any other questions?

Senator Connolly (Ottawa West): Perhaps this is not completely related to that, but I should like to ask Mr. Hockin this. In the estimates of the Department of Finance, under loans, investments and advances, they carry an item for the amounts you are required to pay into the IMF.

Mr. Hockin: That authority came through our Bretton Woods Act itself.

Senator Connolly (Ottawa West): That was done years back?

Mr. Hockin: That is right. It is a continuing authority. It is one we do not need to have every year in the form of the Estimates. It is statutory.

Senator Connolly (Ottawa West): It was made at the time?

Mr. Hockin: That is right.

Senator Connolly (Ottawa West): And it continues?

Mr. Hockin: If there is a change in our quota we have to go back and amend. There was an amendment of our quota and an amendment to the Bretton Woods Agreement Act to cover that in 1966.

The Chairman: Whilst that may be a statutory authority and therefore does not need to be renewed each year, there are no assurances, because Parliament in any year could change it.

Mr. Hockin: That is right, of course Parliament could change it. They could, as it were, change our relationship to the IMF; they could suggest that we withdraw.

Senator Carter: Does the agreement that has already been finalized specify the total number of SDRs or the total value? Is there any limit?

Mr. Hockin: No, it does not. That question is left over for the activation stage, and it requires a high proportion of the countries to

agree on the activation, including the size of the activation, the amount of the new units which will be created. That has to be done periodically. The plan is that it would be for, say, five years, and there would be a new agreement amongst all the participants on how much was to be created.

Senator Carter: So this agreement gives them authority to create any indefinite amount at the moment?

Mr. Hockin: That is right. There is no amount set in the legislation.

Senator Carter: Not any particular number of units?

Mr. Hockin: No.

Senator Carter: Let us say for the sake of argument that they decide to create five billion units. Would that be the same as five billion units worth of gold?

Mr. Hockin: It would certainly have the effect of adding a very large amount of liquidity to each country's balance of payments reserves. It is hard to say whether it would be exactly the same as using five billion worth of gold, but it would add five billion of a high value to countries holding the reserves, and they would respond accordingly.

Senator Carter: But these SDRs do not fluctuate in value?

Mr. Hockin: They are related to gold. If you say one unit of SDRs is the same as a unit of gold, that is the case. If you are concerned about the danger that too much may be created, I think you will be reassured to learn that the decision for activation must be taken by this high weight of gold. Given the rather small number that could veto—which we were discussing earlier—it is unlikely that you would in fact have agreement reached for a creation that would be excessive in relation to the needs of the system.

Senator Carter: Can you look at it this way? The amount of gold being produced in the world is not sufficient for the world's trade, and the world's trade is expanding much faster than gold production. I understand that one of the purposes is to fill the gap so if you project that into the future there will come a time when you will not need gold at all. Is this a step to get away from gold?

Mr. Hockin: I think that it is difficult to foresee all the way down the road, senator,

but certainly in the minds of the people who were discussing this, it was recognized that if the present rate of gold production goes on or if it should decline as it has in some places and if you do not have an excessive amount of deficits of the reserve of currency countries so that you do not have excessive amounts of their currencies being held by other countries in their reserves—that will take a long time for it to happen. The SDR's will really come to be the predominant feature in countries exchanging reserves. They gradually achieve more importance. They start out being a very small proportion and presumably will end up being a very large proportion. Whether that means that countries will no longer be interested in holding any gold or not you simply cannot foresee.

Senator Carter: I was going to follow this one step further. Economists did agree on the value of this device. Some think it is only a temporary measure. Under the de Galle business was very much gained? How do you regard this? Do you regard this as a temporary step to just gain time in order to work up something better or is this something that is going to grow and grow and eventually replace gold as an exchange commodity?

The Chairman: If you do away with the gold what is the value and how would the SDR's get the value? What do you tie them to?

Mr. Hockin: To answer Senator Carter's question first, the proponents of this scheme have never claimed that it answered all the problems in the international payments scheme system by itself. It adjusts itself to a particular problem that was recognized four or five years ago and that was the expected failure of new gold production and accretions from other parts of the world to go sufficiently in order to provide the volume of reserves which countries felt they were going to need. This was paralleled by the fact that although at that time the deficits of the reserve currency countries were very large and were creating vast amounts of reserve currencies for others to hold.

We hold US dollars you see and most other countries do. Every deficit of the US produces more dollars than we can hold, but the US and the United Kingdom had both declared that they were not going to go on allowing their economists to run a balance of payments deficits of the size they had, therefore we had a warning that they were not going to have

new accretions of reserve currency as we had been having them at that time. We foresaw that there just would not be enough reserves coming from these two main sources so the whole intent of this scheme was just to look after that problem, the problem of the amount of reserves in the system, because we feared that if there were not enough reserves, countries would respond too quickly I think along the lines that Senator Connolly was worrying about. If they got into a balance of payments trouble they would try right away to stop it quickly, and they might take much more drastic action and the adjustment that the trading partners would have to make would be very severe. So the intent was to make sure there was enough liquidity in the system, that countries could take their time to make their adjustments and other countries could adjust to their improvement when they went along. But it did not do anything more than that. It was designed just to make sure there was enough liquidity.

Senator Carter: That was the point I was trying to get at, because I remember that the Social Creditors had a theory that if you created just enough purchasing power to supply the goods, everything would be in balance and be perfect. We are talking about a senior official like that, somebody who is going to determine exactly the exact amount of the SDR which will be available.

The Chairman: You think this is a scheme of international social credit, senator?

Mr. Hockin: It might be a helpful analogy.

Senator Connolly (Ottawa West): In a sense, it is not an inapt description—without the political connotation.

Mr. Hockin: It might be more appropriate to think of the analogy in the way in which a national central bank tries to make sure there is enough liquidity in the domestic monetary reserve. It is more like that.

Senator Phillips (Rigaud): I do subscribe to that. It is like a central bank affecting the liquidity of the commercial banks.

Mr. Hockin: Yes.

Senator Desruisseaux: As to the role which Canada plays in this projected agreement that we have, we play a role, are we satisfied that we have carried on in getting what we want out of it?

Mr. Hockin: You are dealing with a couple of prejudiced people here, senator, because I was the vice-chairman of the group of ten which worked on this, and Mr. Handfield-Jones was at that time the Canadian executive director in the International Monetary Fund, so we both were very deeply involved in it. I think I can speak for both of us on this, that although there were some features of this we would sooner have seen in a different form, and there were some features which we would like to have seen in it that do not appear at all, by and large, we could with a clear conscience say that we think this is worthy of acceptance. You never get exactly what you want and you have to decide whether you are getting enough of what you want to make it worthwhile, and I think we were feeling that we were getting what we required.

Senator Carter: I have one more question. Also, I remember that when I was questioning earlier, you raised a question yourself, Mr. Chairman, which I do not think was answered. I would like to hear the answer to it.

Senator Connolly (Ottawa West): Have you got the question?

Senator Carter: I do not have the question. I do not quite remember what it was. I remember that you raised it, Mr. Chairman, and if you would do some rethinking of it, I would put my question now.

The Chairman: No, at this stage I am not doing any more rethinking. Either anything I asked has been answered, or it was not worthwhile answering. You say you have one more question?

Senator Carter: Yes. Mr. Hockin referred to these conditional loans?

Mr. Hockin: Conditional credits.

Senator Carter: Yes. That brought me back to 1957, when Canada had to get, I presume, some of these additional credits. I think this was a kind of transaction in which Canada entered into, that our reserves were pegged

to certain figures and we were allowed to go only a small margin above or a small margin below. Is that the kind of conditions that the IMF attaches?

Mr. Hockin: No, senator. I think you may be confusing this with the standard undertaking which all members of the IMF give, and that is that they will not allow the value of their currency to fluctuate more than 1 per cent on either side of a declared parity. That is a condition of the IMF which all countries have to meet. As a country goes in, as it were, to borrow in order to get additional credit, depending upon the volume in relation to its quota, the fund may request it to develop a scheme to bring its balance of payments back into equilibrium. It may be just as simple as that. It may suggest to it that its budgetary position has been inappropriate or that its monetary policy has been too expansive and that, therefore, it should contract it or that it should slow down the rate of accretion. Depending upon the size of the credit in relation to the country's quota, these conditions become more specific and more onerous because, usually, if the country has to draw that much, it is in bad shape and therefore needs to have rather tighter conditions attached to the credit.

Senator Carter: Is it not a fact that Canada's reserve was set between fixed limits?

Mr. Hockin: No, senator. Well, for a period under agreement with the United States related to our balance of payments arrangement, but even on that score now in the exchange of letters between the Minister of Finance and the then Secretary of the Treasury it was agreed that this no longer had to be expressed in quantitative terms.

The Chairman: Shall I report the bill without amendment?

Hon. Senators: Agreed.

The Chairman: Thank you very much, Mr. Hockin.

The committee adjourned.

APPENDIX

INTERNATIONAL
MONETARY
FUND

Directory

Members

Quotas

Governors

Voting Power

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WASHINGTON, D.C.

March 1, 1969

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MEMBERS, QUOTAS, GOVERNORS AND VOTING POWER

Member	QUOTA		Governor Alternate	VOTES	
	Amount (Millions of U.S. dollars)	Per Cent of Total		Number ¹	Per Cent of Total
Afghanistan	29.00	0.14	Habibullah Mali Achaczai <i>G. Faruq Achikzad</i>	540	0.23
Algeria	69.00	0.33	Seghir Mostefai <i>Yahia Khellif</i>	940	0.39
Argentina	350.00	1.65	Adalbert Krieger Vasena <i>Pedro Eduardo Real</i>	3,750	1.56
Australia	500.00	2.36	William McMahon <i>Sir Richard Randall</i>	5,250	2.19
Austria	175.00	0.82	Wolfgang Schmitz <i>Hans Kloss</i>	2,000	0.83
Belgium	422.00	1.99	Hubert Ansiaux <i>M. D'Haese</i>	4,470	1.86
Bolivia	29.00	0.14	Jorge Jordán Ferrufino <i>Wenceslao Alba Quiróz</i>	540	0.23
Botswana	3.00	0.01	M. K. Segokgo <i>S. W. Assael</i>	280	0.12
Brazil	350.00	1.65	Antonio Delfim Netto <i>Ernane Galvêas</i>	3,750	1.56
Burma	48.00	0.23	Kyaw Nyein <i>Tin Tun</i>	730	0.30
Burundi	15.00	0.07	Joseph Hicuburundi <i>Ferdinand Bitariho</i>	400	0.17
Cameroon	17.40	0.08	Bernard Bidias à Ngon <i>Paul Denis Mbog</i>	424	0.18
Canada	740.00	3.49	Edgar John Benson <i>Louis Rasminsky</i>	7,650	3.19
Central African Republic	9.00	0.04	Antoine Guimali <i>Joseph Moutou Mondziaou</i>	340	0.14
Ceylon	78.00	0.37	U. B. Wanninayake <i>William Tennekoon</i>	1,030	0.43
Chad	9.00	0.04	Abdoulaye Lamana <i>René Roustan</i>	340	0.14
Chile	125.00	0.59	Carlos Massad Abud <i>Jorge Marshall Silva</i>	1,500	0.63
China	550.00	2.59	Peh-Yuan Hsu <i>Kan Lee</i>	5,750	2.40
Colombia	125.00	0.59	Eduardo Arias Robledo <i>Germán Botero de los Ríos</i>	1,500	0.63

MEMBERS, QUOTAS, GOVERNORS AND VOTING POWER

Member	QUOTA		Governor <i>Alternate</i>	VOTES	
	Amount (Millions of U.S. dollars)	Per Cent of Total		Number ¹	Per Cent of Total
Congo (Brazzaville)	9.00	0.04	Edouard Ebouka-Babackas <i>Corentin Kouangha</i>	340	0.14
Congo, Democratic Republic of	57.00	0.27	Albert Ndele <i>Cyrille Adoula</i>	820	0.34
Costa Rica	25.00	0.12	Omar Dengo O. <i>Alvaro Vargas</i>	500	0.21
Cyprus	20.00	0.09	C. C. Stephani <i>K. Lazarides</i>	450	0.19
Dahomey	9.00	0.04	Mamadou N'Diaye <i>Gilles-Florent Yehouessi</i>	340	0.14
Denmark	163.00	0.77	Erik Hoffmeyer <i>Erik Ib Schmidt</i>	1,880	0.78
Dominican Republic	32.00	0.15	Diógenes H. Fernández <i>Luis M. Guerrero G.</i>	570	0.24
Ecuador	25.00	0.12	Jorge Pareja Martínez <i>Vacant</i>	500	0.21
El Salvador	25.00	0.12	Alfonso Moisés Beatriz <i>Roberto Palomo h.</i>	500	0.21
Ethiopia	19.00	0.09	Menasse Lemma <i>Yawand-Wossen Mangasha</i>	440	0.18
Finland	125.00	0.59	Reino Rossi <i>Jouko J. Voutilainen</i>	1,500	0.63
France	985.00	4.64	Jacques Brunet <i>René Larre</i>	10,100	4.21
Gabon	9.00	0.04	Augustin Boumah <i>Claude Panouillot</i>	340	0.14
Gambia, The	5.00	0.02	S. M. Dibba <i>J. B. de Loynes</i>	300	0.13
Germany	1,200.00	5.66	Karl Blessing <i>Johann Schöllhorn</i>	12,250	5.11
Ghana	69.00	0.33	J. H. Frimpong-Ansah <i>S. E. Arthur</i>	940	0.39
Greece	100.00	0.47	Demetrius Galanis <i>Costas Thanos</i>	1,250	0.52
Guatemala	25.00	0.12	Francisco Fernández Rivas <i>Mario Fuentes Pieruccini</i>	500	0.21
Guinea	19.00	0.09	Balla Camara <i>N'Faly Sangaré</i>	440	0.18

MEMBERS, QUOTAS, GOVERNORS AND VOTING POWER

Member	QUOTA		Governor <i>Alternate</i>	VOTES	
	Amount (Millions of U.S. dollars)	Per Cent of Total		Number ¹	Per Cent of Total
Guyana	15.00	0.07	W. P. D'Andrade <i>P. E. Matthews</i>	400	0.17
Haiti	15.00	0.07	Antonio André <i>Clovis Desinor</i>	400	0.17
Honduras	19.00	0.09	Roberto Ramírez <i>Guillermo Bueso</i>	440	0.18
Iceland	15.00	0.07	Jóhannes Nordal <i>Jónas Haralz</i>	400	0.17
India	750.00	3.53	Morarji R. Desai <i>L. K. Jha</i>	7,750	3.23
Indonesia	207.00	0.98	Radius Prawiro <i>Salamun Alfian Tjakradiwirja</i>	2,320	0.97
Iran	125.00	0.59	Khodadad Farmanfarmaian <i>Vacant</i>	1,500	0.63
Iraq	80.00	0.38	Abdul Hassan Zalzalalah <i>Subhi Frankool</i>	1,050	0.44
Ireland	80.00	0.38	Charles J. Haughey <i>T. K. Whitaker</i>	1,050	0.44
Israel	90.00	0.42	Ze'ev Sharef <i>Y. J. Taub</i>	1,150	0.48
Italy	625.00	2.95	Emilio Colombo <i>Guido Carli</i>	6,500	2.71
Ivory Coast	17.40	0.08	Konan Bédié <i>Jean-Baptiste Améthier</i>	424	0.18
Jamaica	30.00	0.14	Edward Seaga <i>G. A. Brown</i>	550	0.23
Japan	725.00	3.42	Takeo Fukuda <i>Makoto Usami</i>	7,500	3.13
Jordan	16.00	0.08	Khalil Salim <i>Rashad El-Hassan</i>	410	0.17
Kenya	32.00	0.15	J. S. Gichuru <i>Duncan Nderitu Ndegwa</i>	570	0.24
Korea	50.00	0.24	Jong Ryul Whang <i>Chin Soo Suh</i>	750	0.31
Kuwait	50.00	0.24	Abdul Rahman Salim Al-Ateeqi <i>Hamzah Abbas Hussein</i>	750	0.31
Laos	7.50	0.04	Sisouk Na Champassak <i>Oudong Souvannavong</i>	325	0.14

MEMBERS, QUOTAS, GOVERNORS AND VOTING POWER

Member	QUOTA		Governor Alternate	VOTES	
	Amount (Millions of U.S. dollars)	Per Cent of Total		Number ¹	Per Cent of Total
Lebanon	9.00	0.04	Joseph Oughourlian <i>Farid Solh</i>	340	0.14
Lesotho	3.00	0.01	P. N. Peete <i>A. Collings</i>	280	0.12
Liberia	20.00	0.09	J. Milton Weeks <i>Frank J. Stewart</i>	450	0.19
Libya	19.00	0.09	Khalil Bennani <i>Faraj Bugrara</i>	440	0.18
Luxembourg	17.40	0.08	Pierre Werner <i>Pierre Guill</i>	424	0.18
Malagasy Republic	19.00	0.09	Victor Miadana <i>Raymond Rabenoro</i>	440	0.18
Malawi	11.25	0.05	Aleke K. Banda <i>D. Thomson</i>	362	0.15
Malaysia	115.00	0.54	Tan Siew Sin <i>Ismail bin Mohamed Ali</i>	1,400	0.58
Mali	17.00	0.08	Louis Nègre <i>Aly Cissé</i>	420	0.18
Malta	10.00	0.05	Giovanni Felice <i>Ph. Hogg</i>	350	0.15
Mauritania	9.00	0.04	Sidi Mohamed Diagana <i>Pierre Braemer</i>	340	0.14
Mauritius	16.00	0.08	Veerasamy Ringadoo <i>Aunauth Beejadhur</i>	410	0.17
Mexico	270.00	1.27	Antonio Ortiz Mena <i>Rodrigo Gómez</i>	2,950	1.23
Morocco	82.80	0.39	Vacant <i>M'Hamed Bargach</i>	1,078	0.45
Nepal	10.00	0.05	Yadav Prasad Pant <i>Kumar Mani Dikshit</i>	350	0.15
Netherlands	520.00	2.45	J. Zijlstra <i>E. van Lennep</i>	5,450	2.27
New Zealand	157.00	0.74	R. D. Muldoon <i>R. W. R. White</i>	1,820	0.76
Nicaragua	19.00	0.09	Gustavo Guerrero <i>José María Castillo</i>	440	0.18
Niger	9.00	0.04	Courmo Barcourné <i>Charles Godefroy</i>	340	0.14

MEMBERS, QUOTAS, GOVERNORS AND VOTING POWER

Member	QUOTA		Governor Alternate	VOTES	
	Amount (Millions of U.S. dollars)	Per Cent of Total		Number ¹	Per Cent of Total
Nigeria	100.00	0.47	O. Awolowo <i>C. N. Isong</i>	1,250	0.52
Norway	150.00	0.71	Erik Brofoss <i>Thomas Levold</i>	1,750	0.73
Pakistan	188.00	0.89	M. Raschid <i>M. Majid Ali</i>	2,130	0.89
Panama	28.00	0.13	Eduardo McCullough <i>Fernando Díaz G.</i>	530	0.22
Paraguay	15.00	0.07	César Barrientos <i>Vacant</i>	400	0.17
Peru	85.00	0.40	Alfredo Rodríguez Martínez <i>Emilio G. Barreto</i>	1,100	0.46
Philippines	110.00	0.52	Alfonso Calalang <i>Roberto S. Benedicto</i>	1,350	0.56
Portugal	75.00	0.35	António Manuel Pinto Barbosa <i>Manuel Jacinto Nunes</i>	1,000	0.42
Rwanda	15.00	0.07	Masaya Hattori <i>Jean Birara</i>	400	0.17
Saudi Arabia	90.00	0.42	Ahmed Zaki Saad <i>Abid M. S. Sheikh</i>	1,150	0.48
Senegal	25.00	0.12	Jean Collin <i>Louis Jean Eude</i>	500	0.21
Sierra Leone	15.00	0.07	M. S. Forna <i>S. B. Nicol-Cole</i>	400	0.17
Singapore	30.00	0.14	Goh Keng Swee <i>Hon Sui Sen</i>	550	0.23
Somalia	15.00	0.07	Abdullahi Ahmed Addou <i>Ali Issa Farah</i>	400	0.17
South Africa	200.00	0.94	Nicolaas Diederichs <i>G. W. G. Browne</i>	2,250	0.94
Spain	250.00	1.18	Faustino García Monco <i>Manuel Varela</i>	2,750	1.15
Sudan	57.00	0.27	El Sherif Hussein El Hindi <i>Abdel Rahim Mirghani</i>	820	0.34
Sweden	225.00	1.06	Per V. Åsbrink <i>S. F. Joge</i>	2,500	1.04
Syrian Arab Republic	38.00	0.18	Zouhair Kani <i>Adnan Farra</i>	630	0.26

MEMBERS, QUOTAS, GOVERNORS AND VOTING POWER

Member	QUOTA		Governor Alternate	VOTES	
	Amount (Millions of U.S. dollars)	Per Cent of Total		Number ¹	Per Cent of Total
Tanzania	32.00	0.15	A. H. Jamal <i>E. I. M. Miei</i>	570	0.24
Thailand	95.00	0.45	Puey Ungphakorn <i>Boonma Wongswan</i>	1,200	0.50
Togo	11.25	0.05	Paulin Eklou <i>Edouard Kodjo</i>	362	0.15
Trinidad and Tobago	44.00	0.21	F. C. Prevatt <i>A. N. McLeod</i>	690	0.29
Tunisia	35.00	0.16	Hédi Nourira <i>Abderrazak Rassaa</i>	600	0.25
Turkey	108.00	0.51	Fahir Tigrel <i>Naim Talu</i>	1,330	0.55
Uganda	32.00	0.15	L. Kalule-Settala <i>J. M. Mubiru</i>	570	0.24
United Arab Republic	150.00	0.71	A. Nazmy Abdel Hamid <i>Mahmoud Sedky Mourad</i>	1,750	0.73
United Kingdom	2,440.00	11.50	Roy Jenkins <i>C. J. Morse</i>	24,650	10.27
United States	5,160.00	24.32	Joseph W. Barr <i>Eugene V. Rostow</i>	51,850	21.61
Upper Volta	9.00	0.04	Tiémoko Marc Garango <i>Robert Pebayle</i>	340	0.14
Uruguay	55.00	0.26	Carlos Sanguinetti <i>Juan M. Bracco</i>	800	0.33
Venezuela	250.00	1.18	Benito Raúl Losado <i>Carlos González Naranjo</i>	2,750	1.15
Viet-Nam	39.00	0.18	Nguyễn Huu Hanh <i>Nguyễn Van Dong</i>	640	0.27
Yugoslavia	150.00	0.71	Kiro Gligorov <i>Nikola Miljanic</i>	1,750	0.73
Zambia	50.00	0.24	Elijah H. K. Mudenda <i>J. B. Zulu</i>	750	0.31
	21,218.00	100.00 ²		239,929	100.00 ²

¹ Voting power varies on certain matters with use by members of the Fund's resources.

² This figure may differ from the sum of the percentages shown for individual countries because of rounding.

EXECUTIVE DIRECTORS AND VOTING POWER

Director Alternate	Casting Votes of	Votes by Country	Total Votes ¹	Per Cent of Total
APPOINTED				
William B. Dale <i>John S. Hooker</i>	United States	51,850	51,850	22.10
E. W. Maude <i>Guy Huntrods</i>	United Kingdom	24,650	24,650	10.51
Guenther Schleiminger <i>Lore Fuenfgelt</i>	Germany	12,250	12,250	5.22
Georges Plescoff <i>Bruno de Maulde</i>	France	10,100	10,100	4.31
B. K. Madan <i>S. S. Murathe</i>	India	7,750	7,750	3.30
Francesco Palamenghi-Crispi <i>Carlos Bustelo (Spain)</i>	Italy ²	6,500	6,500	2.77
ELECTED				
Ahmed Zaki Saad (United Arab Republic) <i>Albert Mansour</i> (United Arab Republic)	Afghanistan	540	12,440	5.30
	Ethiopia	440		
	Iran	1,500		
	Iraq	1,050		
	Jordan	410		
	Kuwait	750		
	Lebanon	340		
	Pakistan	2,130		
	Philippines	1,350		
	Saudi Arabia	1,150		
	Somalia	400		
	Syrian Arab Republic	630		
	United Arab Republic	1,750		
Hideo Suzuki (Japan) <i>Seitaro Hattori (Japan)</i>	Burma	730	10,810	4.61
	Ceylon	1,030		
	Japan	7,500		
	Nepal	350		
	Thailand	1,200		
Robert Johnstone (Canada) <i>Maurice Horgan (Ireland)</i>	Canada	7,650	9,650	4.11
	Guyana	400		
	Ireland	1,050		
	Jamaica	550		
J. O. Stone (Australia) <i>G. P. C. de Kock (South Africa)</i>	Australia	5,250	9,600	4.09
	Lesotho	280		
	New Zealand	1,820		
	South Africa	2,250		

EXECUTIVE DIRECTORS AND VOTING POWER

Director Alternate	Casting Votes of	Votes by Country	Total Votes ¹	Per Cent of Total
ELECTED (Continued)				
Pieter Liefstinck (Netherlands)	Cyprus	450	8,800	3.75
Tom de Vries (Netherlands)	Israel	1,150		
	Netherlands	5,450		
	Yugoslavia	1,750		
Byanti Kharmawan (Indonesia)	Algeria	940	8,593	3.66
Malek Ali Merican (Malaysia)	Ghana	940		
	Indonesia	2,320		
	Laos	325		
	Libya	440		
	Malaysia	1,400		
	Morocco	1,078		
	Singapore	550		
	Tunisia	600		
Leonard A. Williams (Trinidad and Tobago)	Botswana	280	8,272	3.53
Maurice Peter Omwony (Kenya)	Burundi	400		
	Gambia, The	300		
	Guinea	440		
	Kenya	570		
	Liberia	450		
	Malawi	362		
	Mali	420		
	Nigeria	1,250		
	Sierra Leone	400		
	Sudan	820		
	Tanzania	570		
	Trinidad and Tobago	690		
	Uganda	570		
	Zambia	750		
André van Campenhout (Belgium)	Austria	2,000	8,224	3.51
Jacques Roelandts (Belgium)	Belgium	4,470		
	Luxembourg	424		
	Turkey	1,330		
Alfredo Phillips O. (Mexico)	Costa Rica	500	8,080	3.44
Marcos A. Sandoval (Venezuela)	El Salvador	500		
	Guatemala	500		
	Honduras	440		
	Mexico	2,950		
	Nicaragua	440		
	Venezuela	2,750		
Eero Asp (Finland)	Denmark	1,880	8,030	3.42
Sigurgeir Jónsson (Iceland)	Finland	1,500		
	Iceland	400		
	Norway	1,750		
	Sweden	2,500		

EXECUTIVE DIRECTORS AND VOTING POWER

Director Alternate	Casting Votes of	Votes by Country	Total Votes ¹	Per Cent of Total
ELECTED (Continued)				
Alexandre Kafka (Brazil)	Brazil	3,750		
Eduardo da S. Gomes, Jr. (Brazil)	Colombia	1,500		
	Dominican Republic	570		
	Haiti	400		
	Panama	530		
	Peru	1,100	7,850	3.35
Luis Escobar (Chile)	Argentina	3,750		
Ricardo H. Arriazu (Argentina)	Bolivia	540		
	Chile	1,500		
	Ecuador	500		
	Paraguay	400		
	Uruguay	800	7,490	3.19
Beue Tann (China)	China	5,750		
Nguyễn Huu Hanh (Viet-Nam)	Korea	750		
	Viet-Nam	640	7,140	3.04
Antoine W. Yaméogo (Upper Volta)	Cameroon	424		
Léon M. Rajaobelina (Malagasy Republic)	Central African Republic	340		
	Chad	340		
	Congo (Brazzaville)	340		
	Congo, Democratic Rep. of	820		
	Dahomey	340		
	Gabon	340		
	Ivory Coast	424		
	Malagasy Republic	440		
	Mauritania	340		
	Mauritius	410		
	Niger	340		
	Rwanda	400		
	Senegal	500		
	Togo	362		
	Upper Volta	340	6,500	2.77
			234,579 ²	100.00 ³

¹ Voting power varies on certain matters with use by members of the Fund's resources.

² This total does not include the votes of Greece, Malta, Portugal, and Spain, which did not participate in the 1968 Regular Election of Executive Directors. These members have designated the Executive Director appointed by Italy to look after their interests in the Fund.

³ This figure may differ from the sum of the individual percentages shown because of rounding.

OFFICERS OF THE INTERNATIONAL MONETARY FUND

19th and H Streets, N.W., Washington, D.C. 20431

Managing Director	Pierre-Paul Schweitzer
Deputy Managing Director	Frank A. Southard, Jr.
The General Counsel	Joseph Gold
The Economic Counsellor	J. J. Polak
Administration Department	
Director	Phillip Thorson
African Department	
Director	Mamoudou Touré
Asian Department	
Director	D. S. Savkar
Central Banking Service	
Director	J. V. Mládek
European Department	
Director	L. A. Whittome
Exchange and Trade Relations Department	
Director	Ernest Sturc
Fiscal Affairs Department	
Director	Richard Goode
IMF Institute	
Director	F. A. G. Keesing
Legal Department	
Director	Joseph Gold
Middle Eastern Department	
Acting Director*	John W. Gunter
Research Department	
Director	J. J. Polak
Secretary's Department	
Secretary	W. Lawrence Hebbard
Treasurer's Department	
Treasurer	Walter O. Habermeier
Western Hemisphere Department	
Director	Jorge Del Canto
Bureau of Statistics	
Director	Earl Hicks
Office in Europe (Paris)	
Director	Jean-Paul Sallé
Office in Geneva	
Director	Edgar Jones
Chief Information Officer	Jay Reid
Internal Auditor	J. William Lowe
Special Representative to the United Nations	Gordon Williams

* Anwar Ali, Director (on leave)

March 10th, 1969.

Status of International Ratification of Special Drawing Rights

As of the close of business on March 10, 1969, 37 members, representing 52.85 percent of the total voting power, have accepted the proposed Amendment. These members are listed below:

Argentina	Malawi
Australia	Mexico
Bolivia	New Zealand
Burundi	Nicaragua
Congo, Democratic Republic of	Nigeria
Dahomey	Norway
Dominican Republic	Peru
Ecuador	Portugal
Gambia, The	Sierra Leone
Ghana	Sweden
Greece	Trinidad and Tobago
Guinea	Tunisia
Guyana	Turkey
Iceland	United Arab Republic
India	United Kingdom
Indonesia	United States
Israel	Venezuela
Jordan	Yugoslavia
Laos	

INTERNATIONAL
MONETARY FUND

FINANCIAL STATEMENT

Quarter ended January 31, 1969

Issued in accordance with
Article XII, Section 7(a),
of the Articles of Agreement

Washington, D. C.

INTERNATIONAL MONETARY FUND

BALANCE SHEET

as of January 31, 1969

Values expressed in U. S. dollars on the basis of established parities or provisional rates

ASSETS			
GOLD ACCOUNT			
Gold with depositories (See Note 1)			
(73,146,926.624 fine ounces			
at \$35 per ounce)			
Bars	\$2,287,927,599		
General deposits	<u>272,214,833</u>	\$2,560,142,432	
Investments (See Note 2)			
U. S. Government securities			
maturing within 12 months,			
at cost (face amount			
\$834,660,000)	\$799,933,385		
Funds awaiting investment	<u>58,126</u>	<u>799,991,511</u>	\$ 3,360,133,943
CURRENCIES AND SECURITIES (See Note 3)			
With depositories			
Currencies		\$ 3,611,799,294	
Securities		<u>15,323,820,052</u>	18,935,619,346
(nonnegotiable, noninterest-bearing			
demand obligations, payable at face			
value by members in their currencies)			
SUBSCRIPTIONS TO CAPITAL - RECEIVABLE			
Balances of original quotas - not due		\$762,382,875	
Balances of increases in quotas - not due (Contra)		<u>36,000,000</u>	798,382,875
OTHER ASSETS (See Note 4)			<u>52,408,882</u>
TOTAL ASSETS			<u><u>\$23,146,545,046</u></u>

NOTES:

1. Excludes 12,432,500 fine ounces earmarked for members.
2. Made with the proceeds of the sale of 22,856,900.312 fine ounces of gold. Upon termination of the investment, the same quantity of gold can be reacquired.
3. Total outstanding drawings of members amount to \$5,026 million. Currency holdings in excess of members' quotas subject to Fund charges amount to \$3,633 million.
4. The assets and liabilities of the Staff Retirement Fund are not included in this Balance Sheet.
5. Consists of income from investments in U. S. Government securities from November 1, 1957.

INTERNATIONAL MONETARY FUND

BALANCE SHEET

as of January 31, 1969

Values expressed in U. S. dollars on the basis of established parities or provisional rates

CAPITAL, RESERVES AND LIABILITIES		
CAPITAL		
Subscriptions of members		\$21,201,250,000
RESERVES		
Special reserve (See Note 5)	\$297,479,853	
General reserve (See Note 6)	<u>309,764,170</u>	607,244,023
SUBSCRIPTIONS IN RESPECT OF INCREASES IN QUOTAS CONSENTED TO BUT NOT YET EFFECTIVE		
Balances not due (Contra)		36,000,000
INDEBTEDNESS (See Note 7)		
To Participants under General Arrangements to Borrow	\$1,046,000,000	
Other	<u>250,000,000</u>	1,296,000,000
PROVISION FOR POTENTIAL REFUNDS OF STAND-BY CHARGES (See Note 8)		
		622,245
OTHER LIABILITIES (See Note 4)		
		<u>5,428,778</u>
TOTAL CAPITAL, RESERVES AND LIABILITIES		<u>\$23,146,545,046</u>

6. Includes net income for nine months ending January 31, 1969 amounting to \$55,955,153 transferred provisionally to General Reserve pending action by Board of Governors.
7. Represents currencies borrowed under Article VII, Section 2(i) of the Articles of Agreement.
8. The charge for a stand-by arrangement is credited against the service charge for funds drawn under that arrangement which raise the Fund's holdings of currency above 100 per cent of the member's quota. A member that cancels a stand-by arrangement will be paid a refund, which will be the prorated portion of the remaining stand-by charge.

/s/ Walter O. Habermeier
Treasurer

/s/ P. - P. Schweitzer
Managing Director

INTERNATIONAL MONETARY FUND

SUMMARY OF TRANSACTIONS

(Millions of Units)

PARTICULARS	FOR THE QUARTER ENDED JANUARY 31, 1969			
	RECEIPTS		PAYMENTS	
	AMOUNT IN CURRENCY	U. S. DOLLAR EQUIVALENT	AMOUNT IN CURRENCY	U. S. DOLLAR EQUIVALENT
CURRENCY MOVEMENTS				
<u>Use of Fund's Resources</u>				
Afghan afghanis			2,100.00	\$ 6.00
Argentine pesos				
Australian dollars				
Austrian schillings				
Belgian francs				
Bolivian pesos	130.63	\$ 11.00		
Brazilian new cruzeiros				
Burmese kyats				
Burundi francs			25.41	23.50
Canadian dollars				
Ceylon rupees	17.86	3.00		
Chilean escudos	60.57 ¹	9.00		
Colombian pesos	135.00 ²	10.00		
Danish kroner			140.00	35.00
Deutsche mark				
Dominican pesos	6.00	6.00	4.94	1.00
French francs				
Ghanalan new cedis	2.04	2.00		
Guatemalan quetzales	3.00	3.00		
Icelandic kronur	330.00	3.75		
Indonesian rupiahs	1,500.00 ³	6.00		
Iranian rials	1,156.33	15.27		
Irish pounds			2.08	5.00
Italian lire			5,400.00	15.00
Japanese yen				
Korean won				
Liberian dollars	1.80	1.80		
Mali francs	493.71	1.00		
Mexican pesos				
Moroccan dirhams				
Netherlands guilders				
Nicaraguan cordobas	28.00	4.00		
Norwegian kroner				
Pakistan rupees	190.48	40.00		
Panamanian balboas				
Peruvian soles	670.38	25.00		
Philippine pesos	29.25	7.50		
Rwanda francs				
Salvadoran colones				
Somali shillings			7.14	10.00
South African rand				
Sudanese pounds	1.74	5.00		
Swedish kronor				
Trinidad and Tobago dollars				
Tunisian dinars				
Turkish liras	90.00	10.00		
United Kingdom pounds			72.82	72.82
United States dollars				
Uruguayan pesos	37.00	5.00		
Venezuelan bolivares				
		\$168.32		\$168.32
<u>Repurchases</u>				
Afghan afghanis			66.56	\$ 1.48
Argentine pesos				
Australian dollars	28.08	\$ 31.45		
Austrian schillings				
Belgian francs	8,462.11	169.24		
Bolivian pesos			95.00	8.00
Brazilian new cruzeiros				
Burundi francs			175.00	2.00
Canadian dollars				
Ceylon rupees			11.90	2.00
Chilean escudos			65.67 ¹	9.00
Colombian pesos			220.05 ²	13.50
Costa Rican colones			9.94	1.50
Carried forward		\$200.69		\$37.48

(Continued)

INTERNATIONAL MONETARY FUND

SUMMARY OF TRANSACTIONS

(Millions of Units)

CUMULATIVE TOTALS FISCAL PERIOD MAY 1, 1968 TO JANUARY 31, 1969				PARTICULARS
RECEIPTS		PAYMENTS		
AMOUNT IN CURRENCY	U. S. DOLLAR EQUIVALENT	AMOUNT IN CURRENCY	U. S. DOLLAR EQUIVALENT	
				CURRENCY MOVEMENTS
				<u>Use of Fund's Resources:</u>
216.00	\$ 4.80			Afghan afghanis
		15,575.00	\$ 44.50	Argentine pesos
		85.27	95.50	Australian dollars
		1,469.00	56.50	Austrian schillings
		9,525.00	190.50	Belgian francs
				Bolivian pesos
130.63	11.00			Brazilian new cruzeiros
240.00	75.00			Burmese kyats
21.43	4.50			Burundi francs
87.50	1.00			Canadian dollars
		156.22	144.50	Ceylon rupees
98.22 ¹	16.50			Chilean escudos
121.14 ¹	18.00			Colombian pesos
367.87 ²	27.25			Danish kroner
		232.50	31.00	Deutsche mark
		2,775.53	693.88	Dominican pesos
6.00	6.00			French francs
3,678.11	745.00	133.31	27.00	Ghanaian new cedils
10.20	10.00			Guatemalan quetzales
3.00	3.00			Icelandic kronur
330.00	3.75			Indonesian rupiahs
7,250.00 ³	29.00			Iranian rials
1,156.33	15.27			Irish pounds
		10.20	24.50	Italian lire
		239,656.25	383.45	Japanese yen
		36,810.00	102.25	Korean won
				Liberian dollars
3,187.50	12.50			Mali francs
2.90	2.90			Mexican pesos
1,974.83	4.00	506.25	40.50	Moroccan dirhams
				Netherlands guilders
253.02	50.00	536.67	148.25	Nicaraguan cordobas
				Norwegian kroner
133.00	19.00	182.14	25.50	Pakistan rupees
				Panamanian balboas
190.48	40.00			Peruvian soles
3.00	3.00			Philippine pesos
670.38	25.00			Rwanda francs
107.25	27.50			Salvadoran colones
300.00	3.00			Somali shillings
7.50	3.00			South African rand
8.57	1.20			Sudanese pounds
44.30	62.02	37.14	52.00	Swedish kronor
1.74	5.00			Trinidad and Tobago dollars
		442.31	85.50	Tunisian dinars
9.50	4.75			Turkish liras
2.16	4.11			United Kingdom pounds
243.00	27.00			United States dollars
583.33	1,400.00	528.72	528.72	Uruguayan pesos
				Venezuelan bolivares
148.00	20.00	44.85	10.00	
	\$2,684.05		\$2,684.05	
				<u>Repurchases</u>
		66.56	\$ 1.48	Afghan afghanis
		2,668.72	7.63	Argentine pesos
				Australian dollars
				Austrian schillings
				Belgian francs
				Bolivian pesos
		95.00	8.00	Brazilian new cruzeiros
		256.00	80.00	Burundi francs
		175.00	2.00	Canadian dollars
		70.04	64.79	Ceylon rupees
		47.61	8.00	Chilean escudos
		126.11 ¹	19.00	Colombian pesos
		267.30 ²	17.00	Costa Rican colones
		41.41	6.25	
	\$265.50		\$214.15	Carried forward
36.05	\$ 40.38			
478.42	18.40			
10,336.37	206.72			

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INTERNATIONAL MONETARY FUND

SUMMARY OF TRANSACTIONS

(Millions of Units)

PARTICULARS	FOR THE QUARTER ENDED JANUARY 31, 1969			
	RECEIPTS		PAYMENTS	
	AMOUNT IN CURRENCY	U. S. DOLLAR EQUIVALENT	AMOUNT IN CURRENCY	U. S. DOLLAR EQUIVALENT
Brought forward		\$200.69		\$37.48
CURRENCY MOVEMENTS (continued)				
Repurchases				
Cyprus pounds				
Deutsche mark	487.44	121.86	2.00	2.00
Dominican pesos				
Ecuadoran sucres			2.09	6.00
Egyptian pounds			131.25	31.25
Finnish markkaa				
French francs	39.76	8.05		
Guatemalan quetzales			2.25	0.45
Haitian gourdes			528.75	70.50
Indian rupees			1,300.00 ³	4.00
Indonesian rupiahs				
Iranian rials				
Italian lire	144,377.64	231.00		
Japanese yen	1,800.00	5.00		
Jordan dinars				
Liberian dollars			2.20	2.20
Mali francs			493.71	1.00
Mexican pesos				
Moroccan dirhams			12.15	2.40
Netherlands guilders	182.63	50.45		
New Zealand dollars			26.13	29.27
Pakistan rupees				
Panamanian balboas			0.22	0.22
Peruvian soles			1,138.12	42.44
Somali shillings			27.14	3.80
Sudanese pounds			0.87	2.50
Swedish kronor	123.78	23.93		
Syrian pounds			5.48	2.50
Tanzania shillings				
Tunisian dinars			1.47	2.80
Turkish liras			27.54	3.06 ⁴
United Kingdom pounds			41.67	100.00
United States dollars			284.25	284.25
Yugoslav dinars			78.13	6.25
Zambia kwacha				
		\$640.98		\$628.25
Purchases of Currencies for Gold				
Australian dollars				
Austrian schillings				
Belgian francs				
Danish kroner				
Deutsche mark				
Irish pounds				
Italian lire				
Japanese yen				
Mexican pesos				
Netherlands guilders				
Norwegian kroner				
Swedish kronor				
Venezuelan bolivares				
Calls Under General Arrangements to Borrow				
Belgian francs				
Deutsche mark				
Italian lire				
Netherlands guilders				
Swedish kronor				
Repayments Under General Arrangements to Borrow				
Belgian francs			500.00	\$ 10.00
Deutsche mark			200.00	50.00
Italian lire			13,125.00	21.00
Japanese yen			1,800.00	5.00
Netherlands guilders			36.20	10.00
Swedish kronor			20.69	4.00
				\$100.00

(Continued)

INTERNATIONAL MONETARY FUND

SUMMARY OF TRANSACTIONS

(Millions of Units)

CUMULATIVE TOTALS FISCAL PERIOD MAY 1, 1968 TO JANUARY 31, 1969				PARTICULARS
RECEIPTS		PAYMENTS		
AMOUNT IN CURRENCY	U. S. DOLLAR EQUIVALENT	AMOUNT IN CURRENCY	U. S. DOLLAR EQUIVALENT	
	\$265.50		\$214.15	Brought forward
				CURRENCY MOVEMENTS (continued)
				<u>Repurchases</u>
950.04	237.49	0.08	0.20	Cyprus pounds
		5.50	5.50	Deutsche mark
		144.00	8.00	Dominican pesos
		6.27	18.00	Ecuadoran sucres
189.63	38.41	262.50	62.50	Egyptian pounds
				Finnish markkaa
		4.60	4.60	French francs
		7.19	1.44	Guatemalan quetzales
		528.75	70.50	Haitian gourdes
		6,300.00	24.00	Indian rupees
187,743.88	300.39	1,156.33	15.26	Indonesian rupiahs
8,518.86	23.66			Iranian rials
				Italian lire
		0.10	0.29	Japanese yen
		3.40	3.40	Jordan dinars
0.98	0.08	1,481.13	3.00	Liberian dollars
				Mali francs
330.31	91.24	12.15	2.40	Mexican pesos
		57.38	64.27	Moroccan dirhams
		66.66	14.00	Netherlands guilders
		0.57	0.57	New Zealand dollars
		1,138.12	42.44	Pakistan rupees
		52.85	7.40	Panamanian balboas
		1.31	3.75	Peruvian soles
194.24	37.55			Somali shillings
		17.53	8.00	Sudanese pounds
		1.06	0.15	Swedish kronor
		3.23	6.15	Syrian pounds
		- 27.54	- 3.06 ⁴	Tanzania shillings
		77.09	185.00	Tunisian dinars
		284.25	284.25	Turkish liras
		203.13	16.25	United Kingdom pounds
		0.14	0.19	United States dollars
				Yugoslav dinars
				Zambia kwacha
	\$994.32		\$1,062.60	
				<u>Purchases of Currencies for Gold</u>
21.87	\$ 24.50			Australian dollars
337.99	13.00			Austrian schillings
2,799.86	56.00			Belgian francs
45.00	6.00			Danish kroner
739.98	185.00			Deutsche mark
0.62	1.50			Irish pounds
89,999.57	144.00			Italian lire
5,039.82	14.00			Japanese yen
118.75	9.50			Mexican pesos
235.28	65.00			Netherlands guilders
39.28	5.50			Norwegian kroner
108.64	21.00			Swedish kronor
8.97	2.00			Venezuelan bolivares
	\$547.00			
				<u>Calls Under General</u>
				<u>Arrangements to Borrow</u>
3,500.00	\$ 70.00			Belgian francs
1,464.00	366.00			Deutsche mark
115,625.00	185.00			Italian lire
271.50	75.00			Netherlands guilders
232.79	45.00			Swedish kronor
	\$741.00			
				<u>Repayments Under General</u>
				<u>Arrangements to Borrow</u>
		900.00	\$ 18.00	Belgian francs
		372.00	93.00	Deutsche mark
		24,375.00	39.00	Italian lire
		3,600.00	10.00	Japanese yen
		65.16	18.00	Netherlands guilders
		36.21	7.00	Swedish kronor
			\$185.00	

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INTERNATIONAL MONETARY FUND

SUMMARY OF TRANSACTIONS

(Millions of Units)

PARTICULARS	FOR THE QUARTER ENDED JANUARY 31, 1969			
	RECEIPTS		PAYMENTS	
	AMOUNT IN CURRENCY	U. S. DOLLAR EQUIVALENT	AMOUNT IN CURRENCY	U. S. DOLLAR EQUIVALENT
GOLD MOVEMENTS	FINE OUNCES		FINE OUNCES	
Repurchases with Gold	- 0.364	- \$ 12.73 ⁴		
Sales of Gold for Currencies				
INDEBTEDNESS	FINE OUNCES		FINE OUNCES	
To Participants Under General Arrangements to Borrow				
Calls ⁵				
Transfer of Claim ⁶				
France				
Belgium				
Deutsche Bundesbank				
Italy				
Netherlands				
Repayments ⁷	2.857	\$100.00		
		\$896.57		\$896.57

NOTES:

1. Movements of Chilean escudos made at the provisional rate of 5.75000 per U. S. dollar through June 20, 1968, then 6.73000 per U. S. dollar through December 20, 1968 and 7.58000 per U. S. dollar thereafter.
2. Movements of Colombian pesos made at the provisional rate of 13.5000 per U. S. dollar through December 31, 1968 then 16.3000 per U. S. dollar thereafter.
3. Movements of Indonesian rupiahs made at the provisional rate of 250.000 per U. S. dollar through January 17, 1969 then 325.000 per U. S. dollar thereafter.

INTERNATIONAL MONETARY FUND

SUMMARY OF TRANSACTIONS

(Millions of Units)

CUMULATIVE TOTALS FISCAL PERIOD MAY 1, 1968 TO JANUARY 31, 1969				PARTICULARS
RECEIPTS		PAYMENTS		
AMOUNT IN CURRENCY	U. S. DOLLAR EQUIVALENT	AMOUNT IN CURRENCY	U. S. DOLLAR EQUIVALENT	
FINE OUNCES		FINE OUNCES		GOLD MOVEMENTS
1,951	\$68.28			Repurchases with Gold
		15,628	\$547.00	Sales of Gold for Currencies
FINE OUNCES		FINE OUNCES		INDEBTEDNESS
		21,171	\$741.00	To Participants Under General Arrangements to Borrow
4,000	\$140.00	0,286	\$ 10.00	Calls ⁵
		2,286	80.00	Transfer of Claim ⁶
		1,143	40.00	France
		0,285	10.00	Belgium
				Deutsche Bundesbank
				Italy
				Netherlands
	\$140.00		\$140.00	
5,286	\$185.00			Repayments ⁷
	\$5,359.65		\$5,359.65	

4. Reversal of a repurchase obligation as of April 30, 1967.

5. Certificates of indebtedness expressed in terms of fine ounces of gold are issued by the Fund to Participants.

6. In accordance with Paragraph 13 of the General Arrangements to Borrow.

7. Certificates of indebtedness expressed in terms of fine ounces of gold returned to Fund upon termination of obligations.

INTERNATIONAL MONETARY FUND

SUMMARY OF TRANSACTIONS

(Millions of Units)

COUNTRY	CURRENCY	AMOUNT	U. S. DOLLAR EQUIVALENT	NET CHANGE SINCE October 31, 1968	
				CURRENCY ¹	U. S. DOLLAR EQUIVALENT ¹
Afghanistan	Afghanis	1,857.68	\$ 41.28	- 66.64	- \$ 1.48
Algeria	Dinars	33.33*	6.75		
Argentina	Pesos	86,572.52	247.35	- 2,101.04	- 6.00
Australia	Dollars	222.72	249.44	+ 28.07	+ 31.43
Austria	Schillings	399.28	15.35		
Belgium	Francs	11,033.14	220.66	+ 7,961.33	+ 159.22
Bolivia	Pesos	440.47	37.09	+ 35.60	+ 3.00
Botswana	S. A. Rand	*			
Brazil	New cruzeiros	1,225.75	337.67		
Burma	Kyats	264.19	55.48		
Burundi	Francs	1,528.90	17.47	- 175.68	- 2.01
Cameroon	CFA Francs	444.34*	1.80		
Canada	Dollars	570.59	527.80	- 25.42	- 23.51
Central African Rep.	CFA Francs	277.71*	1.12		
Ceylon	Rupees	1,008.97	169.51	+ 8.09	+ 1.36
Chad	CFA Francs	277.71*	1.13		
Chile	Escudos	1,523.52	200.99	+ 170.84 ²	
China	Yuan	*			
Colombia	Pesos	3,653.65	224.15	+ 580.38 ³	- 3.50
Congo (Brazzaville)	CFA Francs	277.71*	1.12		
Congo, Dem. Rep. of	Zaires	21.37	42.75		
Costa Rica	Colones	226.78	34.23	- 9.92	- 1.50
Cyprus	Pounds	6.76	16.21		
Dahomey	CFA Francs	277.71*	1.13		
Denmark	Kroner	582.59	77.68		
Dominican Republic	Pesos	46.60	46.60	+ 6.10 ⁴	+ 6.10 ⁴
Ecuador	Suces	441.00	24.50		
El Salvador	Colones	104.30	41.72		
Ethiopia	Dollars	35.55	14.22		
Finland	Markkaa	524.76	124.94	- 131.29	- 31.26
France	Francs	4,858.52	984.09	+ 34.44	+ 6.97
Gabon	CFA Francs	277.71*	1.13		
Gambia, The	Pounds	2.03	4.87		
Germany, Fed. Rep. of	Deutsche mark	911.52	227.88	+ 157.66	+ 39.41
Ghana	New cedis	146.65	143.71	+ 2.49	+ 2.43
Greece	Drachmas	2,249.79	74.99		
Guatemala	Quetzales	38.39	38.39	+ 3.00	+ 3.00
Guinea	Francs	4,001.57	16.20		
Guyana	Dollars	27.59	13.79		
Haiti	Gourdes	102.67	20.53	- 2.25	- 0.45
Honduras	Lempiras	33.49	16.74		
Iceland	Kronur	1,651.08	18.76	+ 795.38 ³	+ 3.75
India	Rupees	8,198.01	1,093.07	- 499.05	- 66.54
Indonesia	Ruplahs	86,764.09	266.97	+ 20,521.97 ³	+ 2.00
Iran	Rials	9,468.38	125.00	+ 1,156.27	+ 15.27
Iraq	Dinars	21.43	60.00		
Ireland	Pounds	11.36	27.26	- 2.08	- 5.01
Israel	Pounds	236.19	67.48		
Italy	Lire	162,067.75	259.31	+131,248.72	+ 210.00
Ivory Coast	CFA Francs	444.34*	1.80		
Jamaica	Pounds	9.44	22.66		
Japan	Yen	162,344.42	450.96	- 5,400.55	- 15.00
Jordan	Dinars	4.28	12.00		
Kenya	Shillings	199.68	27.96		
Korea	Won	12,744.36	49.98		

* As no par value has been agreed, the original currency subscription is not yet due. Where indicated, holdings represent currency portions of increases in quotas accepted by the Fund on a provisional basis.

1. Changes in the Fund's holdings of currencies not exceeding the equivalent of US\$100,000 are not reflected in these columns.

2. Represents currency received (net of drawing and repurchases - see Summary of Transactions) in accordance with Article IV, Section 8 following a change in the provisional rate of the Chilean escudo on December 20, 1968.

INTERNATIONAL MONETARY FUND

SUMMARY OF TRANSACTIONS

(Millions of Units)

COUNTRY	CURRENCY	AMOUNT	U. S. DOLLAR EQUIVALENT	NET CHANGE SINCE OCTOBER 31, 1968	
				CURRENCY ¹	U. S. DOLLAR EQUIVALENT ¹
Kuwait	Dinars	13.39	\$ 37.49		
Laos	Kips	*			
Lebanon	Pounds	14.76	6.74		
Lesotho	S. A. Rand	2.07	2.90	+ 2.07 ⁵	+\$ 2.90 ⁵
Liberia	Dollars	30.20	30.20	- 0.40	- 0.40
Libya	Pounds	5.08	14.22		
Luxembourg	Francs	689.15	13.78		
Malagasy Republic	Francs	740.55 ⁴	3.00		
Malawi	Pounds	4.11	9.86		
Malaysia	Dollars	250.97	81.98		
Mali	Francs	14,162.36	28.69	+ 50.69	+ 0.11
Malta	Pounds	*			
Mauritania	CFA Francs	277.71 ⁴	1.13		
Mauritius	Rupees	*			
Mexico	Pesos	1,713.51	137.08		
Morocco	Dirhams	591.57	116.90	- 12.15	- 2.40
Nepal	Rupees	92.15	9.10		
Netherlands	Guilders	503.80	139.17	+ 146.41	+ 40.44
New Zealand	Dollars	158.61	177.64	- 26.13	- 29.27
Nicaragua	Cordobas	232.75	33.25	+ 28.00	+ 4.00
Niger	CFA Francs	277.71 ⁴	1.13		
Nigeria	Pounds	32.76	91.73		
Norway	Kroner	560.74	78.50		
Pakistan	Rupees	1,185.99	249.06	+ 191.11	+ 40.14
Panama	Balboas	13.45	13.45	- 0.22	- 0.22
Paraguay	Guaranies	1,415.24	11.23		
Peru	Soles	2,379.72	88.75	- 467.86	- 17.44
Philippines	Pesos	643.50	165.00	+ 29.25	+ 7.50
Portugal	Escudos	1,616.69	56.23		
Rwanda	Francs	2,093.57	20.94		
Saudi Arabia	Riyals	303.75	67.50		
Senegal	CFA Francs	*			
Sierra Leone	Leones	16.29	19.55		
Singapore	Dollars	68.82	22.48		
Somalia	Shillings	106.78	14.95	- 27.18	- 3.80
South Africa	Rand	99.88	139.83	- 7.15	- 10.01
Spain	Pesetas	17,498.51	249.98		
Sudan	Pounds	33.96	97.50	+ 0.87	+ 2.49
Sweden	Kronor	603.24	116.61	+ 103.06	+ 19.92
Syrian Arab Rep.	Pounds	98.43	44.92	- 5.48	- 2.50
Tanzania	Shillings	198.25	27.76		
Thailand	Baht	1,481.74	71.24		
Togo	CFA Francs	*			
Trinidad & Tobago	Dollars	84.37	42.19		
Tunisia	Dinars	27.48	52.34	- 1.47	- 2.79
Turkey	Liras	1,407.44	156.38	+ 117.52	+ 13.05
Uganda	Shillings	199.79	27.97		
United Arab Rep.	Egyptian pounds	76.51	219.71	- 1.81	- 5.20
United Kingdom	Pounds	1,964.72	4,715.34	- 35.86	- 86.05
United States	Dollars	3,871.98	3,871.98	- 351.54	- 351.54
Upper Volta	CFA Francs	277.71	1.12		
Uruguay	Pesos	560.35	75.72	+ 37.17	+ 5.02
Venezuela	Bolivares	759.47	169.33		
Viet-Nam	Piastres	1,590.00 ⁴	19.88		
Yugoslavia	Dinars	3,036.96	242.96	- 78.13	- 6.25
Zambia	Kwacha	31.12	43.56		
		Total	\$18,935.62		

3. Includes currency received by the Fund in accordance with Article IV, Section 8 following a change in the rate of the member's currency.

4. Includes currency portion of an increase in quota (Increases in Quotas of Members - Fourth Quinquennial Review).

5. Represents payment of original currency subscription.



First Session—Twenty-eighth Parliament

1968-69

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE
ON

BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 30

WEDNESDAY, MARCH 20th, 1969

Complete Proceedings on Bill C-157,
intituled:

“An Act to regulate products used for the control of pests and the
organic functions of plants and animals”.

WITNESS:

Department of Agriculture: C. R. Phillips, Director-General, Production
and Marketing Branch.

REPORT OF THE COMMITTEE

The Queen's Printer, Ottawa, 1969

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Lang
Aseltine	Desruisseaux	Leonard
Beaubien	Gélinas	Macnaughton
Benidickson	Giguère	Molson
Blois	Haig	Phillips (<i>Rigaud</i>)
Burchill	Hayden	Savoie
Carter	Hollett	Thorvaldson
Choquette	Isnor	Walker
Connolly (<i>Ottawa West</i>)	Kinley	Welch
Cook		White
		Willis—(30)

Ex officio members: Flynn and Martin

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, March 19th, 1969:

“Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Petten, seconded by the Honourable Senator Eudes, for second reading of the Bill C-157, intituled: “An Act to regulate products used for the control of pests and the organic functions of plants and animals”.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Petten moved, seconded by the Honourable Senator Eudes, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative.”

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

THURSDAY, March 20th, 1969.
(33)

At 11.30 a.m. this day the Standing Senate Committee on Banking, Trade and Commerce met to consider Bill C-157, "An Act to regulate products used for the control of pests and the organic functions of plants and animals".

Present: The Honourable Senators Hayden (*Chairman*), Aird, Benidickson, Burchill, Carter, Connolly (*Ottawa West*), Croll, Desruisseaux, Flynn, Gelinas, Giguere, Isnor, Kinley, Lang, Phillips (*Rigaud*), Savoie and Walker. (17)

Present, but not of the Committee: The Honourable Senators Denis, Eudes and Pearson. (3)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The following witnesses were heard:

Department of Agriculture:

C. R. Phillips, Director-General, Production and Marketing Branch.

Department of Justice:

J. C. Pfeifer, Legislation section.

At 12.15 p.m. the Committee adjourned until 2.00 p.m. this day.

At 2.00 p.m. the Committee resumed consideration of Bill C-157.

Present: The Honourable Senators Hayden (*Chairman*), Aird, Carter, Croll, Desruisseaux, Gelinas, Giguere, Lang and Phillips (*Rigaud*). (9)

Present, but not of the Committee: The Honourable Senator Pearson. (1)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Mr. Phillips and Mr. Pfeifer were again heard. After discussion, it was agreed that a *new* clause 13 be inserted after clause 12.

NOTE: The full text of the amendment appears by reference to the Report of the Committee immediately following these Minutes.

Upon motion, it was *Resolved* to report the said Bill as amended.

At 2.40 p.m. the Committee adjourned.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

THURSDAY, March 20th, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill C-157, intituled: "An Act to regulate products used for the control of pests and the organic functions of plants and animals", has in obedience to the order of reference of March 19th, 1969, examined the said Bill and now reports the same with the following amendment:

Page 9: Insert the following next after clause 12 and renumber clauses 13 and 14 as clauses 14 and 15 respectively:

"Appeal Procedure

13. The provisions of section 9 of the Hazardous Products Act apply *mutatis mutandis* in respect of any order made under this Act that directly affects the rights or interests of any person, as if that section were incorporated in this Act and as if the words "Control Products Board of Review" were substituted for the words "Hazardous Products Board of Review" in subsections (1) and (2) of that section."

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

EVIDENCE

Ottawa, March 20, 1969.

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-157, to regulate products used for the control of pests and the organic functions of plants and animals, met this day at 11.30 a.m. to give consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: May we have the usual order to print?

Upon motion, it was *resolved* that a verbatim report be made of the proceedings and that 800 copies in English and 300 copies in French be printed.

The Chairman: Mr. C. R. Phillips, Director General, Production and Marketing Branch, Department of Agriculture, will carry the explanation of this bill.

Mr. C. R. Phillips, Director General, Production and Marketing Branch, Department of Agriculture: Mr. Chairman, this bill is an up-dating of the current pest control products bill, and it is because of the increased use of pesticides and associated products and the greater general concern in Canada with respect to pesticides and their value and potential harmfulness, that it was decided there should be additional authority to regulate the manufacture, handling, use and advertising of such control products. At the moment there is only the authority to cover the product *per se* and its composition. The bill before you brings in these additional provisions to provide tighter control over pest control products.

The Chairman: The language in section 3, for instance, would appear to parallel the language in the Food and Drugs Act.

Mr. Phillips: Indeed. As the Chairman has said, it parallels the Food and Drugs Act. One

reason for the change in the form of the wording is that up until the present time it has been considered that the Pest Control Products Act had an agricultural base, and yet there were many pesticides in use in Canada that did not have an agricultural base—the household pesticides, and so on. The re-wording of this bill makes it legal for the administration—which happens to be the Department of Agriculture—to administer those household pests rather than having a separate bill dealing with household pests.

Senator Carter: Would not that be covered by the Hazardous Products Act?

Mr. Phillips: Indeed, the Hazardous Products Act excludes pest control products.

Senator Carter: Why do you need authority, if it is already covered in another act?

The Chairman: No, it is excluded from the other act.

Senator Carter: Oh, it is excluded from the Hazardous Products Act?

Mr. Phillips: Yes.

The Chairman: I am wondering about your definition of “pest”. We keep talking about pesticide residue, and you are talking about pests:

“Pest” means any injurious, noxious or troublesome insect, fungus, bacterial organism,

—etcetera. And then you say:

...and includes any injurious, noxious or troublesome organic function of a plant or animal;

What is the origin of that definition?

Mr. Phillips: There are a few products that are not in the normal sense of the word a “pest”. For instance, sprout inhibitors are not controlled by anything now, but they can be

harmful in themselves, through misuse or putting them in the way of children, and so on.

The Chairman: Do you say a growth inhibitor?

Mr. Phillips: Yes.

The Chairman: How does that work?

Mr. Phillips: I can give you an example of one that is not in use now but was tried. If you put a little material on a tobacco plant it will stop the sprouting. It is a growth inhibitor of that particular part of the plant. Also there are top killers on potatoes. You cannot say that the tops of potatoes are pests, but this material is used to kill it before the harvest, so that it will be easier to harvest the potatoes underground.

The Chairman: You are using something to kill something?

Mr. Phillips: Yes.

The Chairman: And the application to the potato plant would be that you would spread something on the plant to stunt its growth?

Mr. Phillips: It would kill the tops so they can harvest the tubers and not have as much foliage.

The Chairman: That is to allow more juice or sap to get down into the potatoes?

Mr. Phillips: Not really, just to kill them and make it easier to harvest them.

The Chairman: It is easier to operate the potato picker?

Mr. Phillips: Yes.

Senator Croll: Stay out of the farming area, Mr. Chairman!

The Chairman: What is that?

Senator Croll: I was just saying that you should stay out of the farming area, Mr. Chairman. You are not doing so well on potatoes.

The Chairman: As a matter of fact, I know, because I did the things that he is talking about when I was a law student, even down to spraying the tops of potatoes and operating a potato picker at harvest time, and it was very helpful to have the growth all dried up.

Senator Connolly (Ottawa West): This is the bill Senator Petten sponsored in the house?

The Chairman: That is right.

Senator Connolly (Ottawa West): The thing I was going to ask in the house...

The Chairman: I do not think Mr. Phillips is through with his presentation yet. Are you, Mr. Phillips?

Mr. Phillips: Yes, I am.

The Chairman: I am sorry. Go ahead, senator.

Senator Connolly (Ottawa West): —was this—and, incidentally, I think Senator Petten did a splendid job of explaining this bill: under this bill “minister” means the Minister of Agriculture, and I have not got the bill that Senator Carter sponsored about noxious substances...

The Chairman: Hazardous substances.

Senator Connolly (Ottawa West): Hazardous substances, yes; but it seems to me that it was not the Minister of Agriculture who was responsible for administering that bill.

Mr. Phillips: No, it was the Minister of Consumer and Corporate Affairs.

The Chairman: There was a reason for that, because it was the commercial aspects of hazardous products being dealt with there.

Senator Connolly (Ottawa West): There is probably going to be a certain amount of overlap of inspection and that kind of thing, and I wonder if there is any provision made for avoiding duplication.

Mr. Phillips: Mr. Chairman, that is certainly the intent. I could give you a little history on it. When the hazardous substances bill was first drafted it was intended to be under National Health and Welfare, and it was intended to cover all those areas which were not covered by other legislation. It was drafted excluding the pest control products bill and several others, but they wanted to pick up areas like fabrics which were inflammable—

Senator Connolly (Ottawa West): Paints.

Mr. Phillips: Yes, that sort of thing. So, it is a generalized bill which provides for the exclusion of the other legislation—let us say a

fertilizer which is not excluded under that bill, and they could take prompt action until the fertilizer bill was amended. In this way it is a catch-all to provide protection against hazard. When the Government re-organization took place, and since the Minister of Consumer and Corporate Affairs is to look after foods in the economic area as distinct from the health area, this was then transferred from the jurisdiction of the Minister of Consumer and Corporate Affairs.

Mr. Chairman: Mr. Phillips, may I come back to the question I asked you earlier? I do not see anything in the bill that covers what you call a growth inhibitor. I have looked at the definition of "control product", and it is certainly not in there.

Mr. Phillips: Section 2(c)(i), in the definition of "control product", reads:

...any compound or substance that enhances or modifies or is intended to enhance or modify the physical or chemical characteristics...

No, that is not it.

The Chairman: No, I read that one, and it does not cover it. Then I looked at the definition of "pest" and found that it does not cover it either.

Senator Kinley: This would include veterinary products which are covered by another act.

Mr. C. L. Stevenson, Plant Products Division, Department of Agriculture: It is covered under (h) where it says that it includes "any injurious, noxious or troublesome organic function of a plant or animal".

Mr. Phillips: Yes, under (h) it includes "any injurious, noxious or troublesome organic function of a plant or animal". That is the one that is intended to cover that. You may think it is pretty general, but it is troublesome.

Senator Pearson: I don't see it.

Mr. Phillips: Let us take tobacco. If you have to send people around to nip off the sprouts, and that is costly, then it is troublesome, and in the sense that if you can put on one application that will inhibit the growth of the sprouts—and I assume that was the intent...

The Chairman: But, Mr. Phillips, taking your example of brussels sprouts, is that the control product?

Mr. Phillips: Well, tobacco...

The Chairman: All right, let us take tobacco. You put something on the leaves which will inhibit the growth?

Mr. Phillips: Yes.

The Chairman: Now, what is the control product? Is it not the something that you put on the leaves?

Mr. Phillips: The control product is what you put on the leaves, and I believe there is a relationship between the definitions of "control product" and "pest", so we have to take the two together. Section 2(c) reads:

"control product" means any product, device, organism, substance or thing that is manufactured, represented, sold or used as a means for directly or indirectly controlling, preventing, destroying, mitigating, attracting or repelling any pest...

The Chairman: Yes, but is that a pest that you are treating when you put the product on to kill sprouts on the tobacco plant?

Mr. Phillips: I was suggesting that the two lines at the bottom of (h) include the sprouts as being a troublesome organic function of a plant.

The Chairman: No. Just follow my reading. It says that a control product includes any compound or substance that enhances or modifies or is intended to enhance or modify the physical or chemical characteristics of a control product...

Mr. Phillips: Yes.

The Chairman: ...to which it is added. This is not the tobacco plant.

Mr. Phillips: No, I misled you when I first started to read section 2(c)(i) and then stopped. That is not it. Section 2(c)(i) relates to a material that is put into a control product in its formulation, and it does not cover the point we were discussing. So, if I could leave that aside...

Senator Aird: If you look at section 3(1) you will see that it reads:

No person shall manufacture, store, display, distribute or use any control product under unsafe conditions.

The Chairman: I am wondering if killing the sprouts on a tobacco plant—whether that application would create unsafe conditions.

Senator Aird: My question to Mr. Phillips is: Is it by design that you do not define "unsafe conditions"? You go to some extent to define "control product", but it is the "unsafe conditions" aspect of a control product about which we are concerned. Is it by design that this is not defined?

Mr. Phillips: I believe that the regulatory power provides for the prescription of unsafe conditions by regulation. It is certainly not defined in the bill. I will see if I can find. . .

The Chairman: Yes, you have to power to make regulations respecting the standards for efficacy and safety of any control product. That is in section 5(i) on page 4 of the bill.

Mr. Phillips: Yes, Mr. Chairman.

The Chairman: So they must have intended to deal with it by regulation.

Mr. Phillips: I think unsafe conditions are provided for in subsection (j).

Senator Connolly (Ottawa West): If you look at the French text you will see that "unsafe conditions" is translated as "dans des conditions dangereuses", which means that it is the conditions of storage, distribution, and use that create the dangerous conditions.

Senator Aird: Are you suggesting, Senator Connolly, that that phrase has a wider connotation?

Senator Connolly (Ottawa West): I thought so when I read it first.

The Chairman: It is difficult to have anything wider than "unsafe conditions", and I think there is power by way of regulation. . .

Senator Aird: With respect, Mr. Chairman, I think the words we should be concerned with are "unsafe conditions".

The Chairman: I notice that in the last paragraph of the authority to make regulations there is a general authority that would certainly give them the right to define "unsafe conditions" by way of regulation. Subsection (o) is:

(o) generally for carrying out the purposes and provisions of this Act.

Senator Lang: Subsection (3) of section 3 contains the word "deemed". It reads:

A control product that is not manufactured, stored, displayed, distributed or

used as prescribed, or is manufactured, stored, displayed, distributed or used contrary to the regulations shall be deemed to be manufactured, stored, displayed, distributed or used contrary to subsection (1).

That ties it in with the regulation. Anything not done in accordance with the regulations is deemed to be stored under unsafe conditions by subsection (1).

Senator Aird: I believe this gives a very wide discretion to the minister.

The Chairman: Well, to the Governor in Council.

Senator Aird: Yes.

Senator Kinley: This is a bill giving power to the Governor in Council. First it says you cannot do anything, and then if you do it you cannot get it, and with respect to the rest you have to play it by ear. This bill has no definiteness in it, and furthermore it does not name anything. In the discussion in the house we were told about DDT and mercury. Is this bill going to stop the use of these things? What is the object of this bill?

Mr. Phillips: Mr. Chairman, if I may, I will start with the current act, and then try to go on with why there are some of these changes.

In the current act, pest control products as defined in it are controlled, and they are required to be registered before sale. The application for registration is examined in order to determine whether they are efficacious for the purpose intended, and whether they will leave a residue on produce, contrary to the Food and Drugs Act, when used according to directions. Once it has been determined that a product can be used safely under the conditions proposed, and on the basis of the manufacturer's representations, then it can be registered and it is ready for sale if it is properly labelled. That did not cover a number of areas of control that might be necessary for safer use. The trend now is to attempt to get biological control of pests. Two examples were given in the House of Commons Agriculture Committee. With Biologies it may be necessary to have examination of a pest control product manufacturer's premises in order to be sure the products going on the market are safe rather than waiting until the product is on the market before testing it, because the costs would be

lower. That is one reason for the expansion of subsection (3) to include examination of the premises and unsafe conditions on the premises. The other area is a little more difficult and deals with use by farmers and I cannot speak on it with authority.

The Chairman: There is no provision in the bill for a control product manufacturer to contest a ruling or decision made by the department prohibiting manufacture and sale.

Mr. Phillips: In the Commons committee an amendment was made to the bill in relation to detention.

The Chairman: But detention does not deal with this situation.

Mr. Phillips: No. This matter was discussed at length in that committee. Indeed the Canadian Agricultural Chemicals Association appeared before the committee and asked for the right of appeal. That was discussed at length. In their explanation they said the need for it had not been experienced, that there had been co-operation and there had been no cases in which there had been a need to use it, but they would like to have it just in case it were needed.

The Chairman: Recently we dealt with a bill which is now the Hazardous Products Act. In that act provision is made for putting producers on a prohibited list to be used only in accordance with regulations, and provision is made for what amounts to an appeal by any person injured or interested by reason of that ruling to a Hazardous Products Board of Review. Why in the circumstances is no such provision made here?

Mr. Phillips: We looked at that, because it was being considered at about the same time as this bill was before the House of Commons committee. The equivalent in this bill to something going on a hazardous products list would be where the minister cancelled the registration of a product. In other words, if a hazardous product went on a list it could not be sold any more; it was being sold but could not be sold any more. In this case the registration would be cancelled and it could not be sold any more.

Regulations just made by the Governor in Council under a bill similar to this provide that before registration of a product can be cancelled 30 days notice must be given.

The Chairman: There is nothing of that sort in this bill.

Mr. Phillips: No, but there is provision for it. It is not right in the bill, It is in the registration and cancellation provisions.

The Chairman: Where is the registration?

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: It is section 5(d).

Mr. Phillips: It is really section 5(b).

The Chairman: That only makes regulations for registration of control products and establishments in which they are manufactured.

Mr. Phillips: Yes.

The Chairman: I am thinking of the case where you have registration and because further research discloses certain things the registration is cancelled. You do not give the person affected any right to challenge that, and you do not provide for any right to compensation.

Mr. Phillips: No, there is no provision for compensation, that is for sure.

The Chairman: We seem to have a different policy on this bill. Cannot we get a little uniformity? Or is there good reason for not having uniformity?

Mr. Phillips: Let me go through the stages involved in registering a pesticide. When it arrives at the Plant Products Division of the Department of Agriculture there is documentation to establish whether it is efficacious or not, indicating all the trials. These documents then go to the Research Branch of the Department of Agriculture, the Wildlife Section of the Department of Indian Affairs and Northern Development and various agencies of government that it might impinge on. It is examined in the light of that and reports are made to the Department of Agriculture. Apart from the manufacturers themselves, the scientists involved are really employees of the federal Government. If a product is registered and subsequently the registration is to be cancelled, there will be provision in the regulations for this 30-day notice period, and they will be able to appear for a hearing before the minister and others.

Another part of the answer is that there has been no case, of which we are aware, in

which there has not been the possibility of appeal to the minister, to the deputy minister, to members of Parliament, about action taken by a civil servant against a manufacturer. Certainly we hear about it and have to examine it. The deputy minister made the point, which he admitted was strictly philosophical, that immediately there is a board of review on this basis there is a tendency for an individual not to take the same care because he thinks it will be reviewed by somebody else anyway. Philosophically he is against the principle of not putting the individual to the test immediately and making a proper judgment on the matter.

The Chairman: But where is there any right of the person affected to appear at the stage when such a decision is being considered? There is no notice of a hearing where he might present his side. There is no right of appeal afterwards and yet the effect of taking this product off the registration list is to make it a prohibited product. Is that right?

Mr. Phillips: That is right. I cannot tell you a time when a registration was cancelled, but it could occur under these circumstances, that the manufacturer had a record of not supplying what was on the label and after continued pressure and even a court case it is still the same situation. Then the only way for protection is to cancel the registration. That does not prevent the man. . .

Senator Connolly (Ottawa West): What do you mean by court case? In the instance of someone that was injured?

Mr. Phillips: Of course any citizen, but usually the department.

Senator Connolly (Ottawa West): Did you mention a court case? Oh, it is hypothetical.

Mr. Phillips: It is hypothetical. I cannot recall a case in the pest control product area in the recent years, but there have been cases in feeds and fertilizers where samples and results are sent and they do not come up to the proper level. You take the firm to court and they are fined and they still do not comply so then you cancel the registration. It is the only way to protect the public.

The Chairman: I am not discussing that feature at all. I am not suggesting that the department should not be able to cancel the registration at any time, but I do say that the person who is affected should have some

opportunity and should have his day in court or somewhere to point out that this has not been properly done. If we provide that day in court under the Hazardous Products Control Bill, and it was in the bill when it came into us, we strengthen it a little bit by saying "shall" instead of "may" be referred to the Hazardous Products Board of Review. Why should there not be a right to a board of review here?

Senator Kinley: Is there any protection for inventories that are connected under the present way where you have got to register? There is a responsibility when you approve them by registration and then they have got a lot of inventory. What are you going to do with that? Pay for it?

The Chairman: There is no provision for compensation.

Mr. Phillips: If I could speak to that one. It is a little different. If there were an inventory of goods, and using my previous example where they were not up to standard and that is why the cancellation was made, the goods would be detained and sale would be stopped by that means, not by the registration means. They would be put under detention and until they were corrected they could not be sold. Now, I think the amendment, if my memory serves me correctly, provides for the right of appeal against the detention.

The Chairman: I do not see it.

Senator Kinley: All of these things have two aspects. You go and spray in the forest and you wind up ruining the salmon in the stream. Which are you going to do, destroy the salmon and save the forest? If you are going to use this product what are you going to do about it?

Mr. Phillips: It is a little different matter. That is part of the registration process in determining whether it can be used on the forest. If in using it on the forest spray went over into a stream and affected salmon in the actual operation of the spraying and if it were absolutely necessary for use in those forests then the cautions on the label would indicate that under no circumstances should this be sprayed so that it would run into the stream. This is the type of protection that is provided here. If there is absolutely no way of using it without that effect it has to be a judgment matter. As you say, what are you

going to do, protect the forest and kill a few salmon or are you not going to? It is a judgment matter.

The Chairman: I am thinking of a situation, senator, where the department changes by reason of further research. It changes its position in relation to the formulation or the materials to be included in the control product and at that stage then a person who is manufacturing under the old law then finds himself with an inventory he is prohibited from selling. There is no provision for compensation in those circumstances?

Mr. Phillips: No.

The Chairman: There is no provision for appeal? My own feeling is that there certainly should be an appeal.

Senator Lang: May I ask the witness a question? Because of the definition in this subsection 2, this act could control what normally would be considered safe products. I can conceive of many safe products falling within the definition of devices or substances for repelling pests. I know there is a company that sells electric light bulbs. You put them up in your porch to repel mosquitos. I suppose that would be a device for repelling insects and, as such, would fall within the ambit of that definition. Maybe citronella oil for repelling mosquitos also falls within that definition. I can see where many, many normally considered safe products would be falling into that. I think the chairman is expressing the rights of the individual compensation and appeal.

The Chairman: When this bill becomes law, if we provided for a board of review similar to the Hazardous Products...

Mr. Phillips: Well, can I answer this other question first in terms of the devices? You call it a safe product and there is no doubt about the light bulb being safe, but the question is, does it do that they say it will do? You examine it and determine whether it indeed does repel the insects and if it does not you do not allow them to say so. That is the purpose of the control of the devices. It may be safe in itself, but may be ineffective.

The Chairman: This covers the advertising feature.

Mr. Phillips: It is the statement on the label. Speaking to your question, Mr. Chair-

man, it would certainly make it a more formalized approach in the cancellation of a registration. Incidentally, registrations are annual and a cancellation would be in mid-year. If there were a change to be made in terms of the requirement and these happened in labelling and so on, the manufacturers are informed that the change will take place usually in the next registration year. It is a matter of changing the labelling more than not allowing the product to be sold any more. It may be that the statement says to use it at a certain concentration and it is decided that it should be of a little less concentration. The directions for use have to be changed. In examining for registration in the subsequent year these things are taken into account after having warned the manufacturer. He is advised that we cannot accept this unless he has made the changes. They come in and say, "Goodness gracious, we have all of these stocks." We are really having a board of review. It is not a formal one in the sense it is spelled out, but this type of review is going on all the time with them. The manufacturers themselves indicated that they had no difficulty at all and their only concern was with the hypothetical, that 20 years from now it may not be the same people.

The Chairman: The right to review would not interfere with any action that you might want to take, but it would enable the person affected to challenge that in a subsequent proceeding. In the amendment, what you have done would not be affected?

Mr. Phillips: Yes.

Senator Aird: That partially answers the point which I was going to make. One thing which emerged in the Committee on Science Policy is that science is such a changing thing and has so many successes and failures, not discovered until a subsequent time. In other words, there is a human error factor in science. And there is a human error factor in nearly everything we do.

My point is that, no matter how efficient or scientific your approach is, there is always an element of possibility of human error. We have got one today, in the case of General Motors recalling automobiles I do not suppose there could be a more stringent examination of a product or a machine than that which must be done in the case of General Motors products. When you have this human error element introduced in anything of this

nature, I think I would certainly support the chairman, that the human error element is something we should provide for.

The Chairman: Senator Aird, in what you said, was this supporting the idea that there should be a board of review?

Senator Aird: Yes.

The Chairman: Not on the other question, of compensation?

Senator Aird: No.

Senator Pearson: This is something which is continually going backwards and forwards. I find that there is a difference of opinion on nearly everything that you have in this bill. There is a question and an answer, and someone else has another answer that is just as good. For that reason I think we should provide in this legislation for a right of appeal. The manufacturer through no mistake on his own part, but through a change of the product and such like, and cancellation of registration, or detention for six months or more, he should have a right to appeal to a court of law. For that reason, I drew up an amendment to this bill, which would suggest:

Any proceedings taken under this act against any person shall in no way interfere with or lessen the right of an aggrieved person to any legal remedy to which he may be entitled.

This is just an indication or a copy of a provision in the former act—and I do not know why it has been left out.

Senator Connolly (Ottawa West): It was a good deal more explicit than that.

The Chairman: I am not sure, senator, whether that does what the committee was wanting or that it does what you want. I think we need something more specific, that any decision in relation to registration or detention or otherwise under this act shall be subject to review, using the section that is in the Hazardous Products Act.

Senator Connolly (Ottawa West): Why should we not instruct the officials to have a look at that section of the Hazardous Products Act and see whether it would not be, in their view, a valid section to insert in this bill?

The Chairman: Time marches on. If the other provisions of the bill are satisfactory to the committee, I would suggest that we sim-

ply stand for consideration the form of our amendment to provide for a review, similar to what is in the Hazardous Products Act; and that our Law Clerk get together with the departmental officials; and that they come back here at 2 o'clock and report the result of their conference. Is that satisfactory?

Hon. Senators: Agreed.

Senator Burchill: Mr. Phillips, what has been the experience of the department so far in respect to the situation we have under consideration? Have you had any cases?

The Chairman: That would be under the present act.

Mr. Phillips: We have had manufacturers themselves appearing before the Agricultural Committee of the House of Commons. They had indicated they had no problem. Indeed, when talking about the detention, one committee member asked what experience the manufacturers had about detention and the reply was: "I have had only two products detained in five years, and it was my fault." That was the type of answer they gave.

It was somewhat in the same vein as the chairman is saying, that it was in terms of principle he was talking about, not in terms of whether there would ever be a need for it.

Senator Carter: Before we cut off the discussion, there is one point I would like to clarify. When a substance or product is de-certified, what part of this bill covers the disposition of that product, after that?

The Chairman: The detention section, I would think. Is that right, Mr. Phillips?

Senator Croll: On page 6, clause 9 (2).

The Chairman: Clause 9.

Senator Carter: This is what is seized. This is a decision on stuff that is seized. I am not thinking about stuff that is seized. This is something that prohibits.

The Chairman: That would follow. First of all, you have a seizure and the product may still be registered; or you might have a registration cancelled, and the product seized.

Senator Carter: I am thinking about something left on the shelf in the store. You cannot sell it any more.

Senator Connolly (Ottawa West): That goes to the question of the chairman's point, as to whether or not there should be compensation.

Senator Kinley: Under this bill, there is provision for two years in jail, whereas in the other bill you could get thirty days.

The Chairman: What would you wish to do? Would you like to have a choice given—in the range of thirty days to two years?

Senator Kinley: It is too much to put a farmer for two years in jail for getting into trouble. That is a bad thing.

The Chairman: The penalty provision here is that if the prosecution proceeds as an indictable offence the person, if convicted, is liable to imprisonment for two years. But he might be sentenced for one month.

Senator Kinley: I know, it is a question of might. It should not be so big.

The Chairman: There might be a very notorious case. Now, senators, we have a motion to adjourn until 2 o'clock.

Senator Kinley: Are we going to take any notice of what was said in the house, about people wanting to appear on this bill, from the west?

The Chairman: The question there was, if when this bill comes up for third reading, which would be next week, and if the senator who was raising the question is there, if he then feels that there is more evidence that should be before the committee, he could raise the issue on the third reading, and have the matter referred back.

Senator Kinley: This bill is big business and I think it should be a perfect. I think there is duplication with other acts and that we had better be careful about it. It is affecting classes of the public which do not know the law and who could be caught very easily.

The Chairman: Senator, there is right now a pest control statute.

Senator Kinley: I know that, but this goes further. This is preventive legislation.

The committee adjourned until 2 p.m.

Upon resuming at 2 p.m.

Senator Salter A. Hayden (Chairman) in the Chair.

The Chairman: Honourable senators, I call the meeting to order. We left one item open when we adjourned this morning, the question of a provision for a right to have any

order or direction made under this bill the subject matter of review. What we have done is to take the provisions of the Hazardous Products Act and make them apply *mutatis mutandis* to any order that is made under this bill, as being the simplest way instead of repeating the procedures.

I will read it to you in a moment. We did attempt to discuss what we were proposing to do, but so far as the department was concerned, I do not think they were in the position where they felt that they had the necessary authority to discuss and to say that they did or did not approve, and, so far as they are concerned, they still stay with the bill.

Now, I will read a proposed amendment which simply contemplates renumbering clauses 13 and 14 of the bill as clauses 14 and 15, and inserting a new clause 13 entitled "Appeal Procedure." This is the way it reads:

"Appeal Procedure"

13. The provisions of section 9 of the Hazardous Products Act apply *mutatis mutandis* in respect of any order made under this Act that directly affects the rights or interests of any person, as if that section were incorporated in this Act and as if the words 'Controlled Products Board of Review' were substituted for the words 'Hazardous Products Board of Review' in subsections (1) and (2) of that section."

Senator Croll: Mr. Chairman, that is a nice, easy way of doing it.

The Chairman: Sure, it is.

Senator Croll: But at the same time it is a complicated way of doing it. When I pick up an act and read it I do not want to have to go over to some other act in order to get the section there to see what the interpretation of the procedure is. Admittedly, this is the easier way, but are we not really better off to incorporate the procedures into our bill so that, when someone has the act in front of him, he has the whole act in front of him and does not have to go to another act which he may not have in front of him.

The Chairman: He has a heading entitled "Appeal Procedure". We have done this before, you know.

Senator Croll: Where? I am trying to think of it now myself.

The Chairman: We incorporated procedures *mutatis mutandis*. Was it in the Income Tax Act?

Mr. Hopkins: We have done it before and it is easily adaptable, in my opinion, to provide for the same sort of appeal in this bill. I can also tell you that it would take me at least a week to do it in any other way.

Senator Croll: What do the drafters of the department say?

The Chairman: So far no comment. Do you wish to ask them?

Senator Croll: Yes.

Mr. Pfeifer: I would not wish to express an opinion on a colleague's drafting procedures. I know that appeal provisions are very complicated and do take time. Even in a day of intensive work it is not too easy, because one must always consider the implications of the appeal, who is to hear it, and who is to pay the person on the appeal tribunal; is there going to be an appropriation and if so, from where. The *mutatis mutandis* procedure is used frequently but again there are other acts which spell it out. But the *mutatis mutandis* procedure is to be found frequently in the statutes.

Senator Lang: Is the Hazardous Products Act now law?

The Chairman: It is still in the House of Commons.

The Law Clerk: This Act comes into force on proclamation. In the recent past we have had the same situation in anticipation of an act coming into force where the timing can be adjusted by proclamation.

The Chairman: Are there any questions?

This bill we are now dealing with has been before the Commons and it has come to us, and when we make this amendment it will go back to the Commons where they will consider whether they accept it or not. If they do not accept it, then we will receive a message saying that it has not been accepted and we will have to try to resolve the issues. Certainly as a matter of principle I cannot see why any person should say there should not be a right of review. The decisions taken could be very serious and drastic.

Senator Croll: I move the amendment.

The Chairman: Shall I report the bill as amended?

Honourable Senators: Agreed.

The committee adjourned.



First Session—Twenty-eighth Parliament

1968-69

THE SENATE OF CANADA

PROCEEDINGS

OF THE

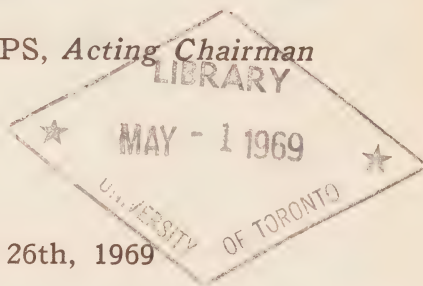
STANDING SENATE COMMITTEE

ON

BANKING, TRADE AND COMMERCE

The Honourable LAZARUS PHILLIPS, *Acting Chairman*

No. 31



WEDNESDAY, MARCH 26th, 1969

Complete Proceedings on Bill C-173,

intituled:

“An Act respecting the organization of the Government of Canada
and matters related or incidental thereto”.

WITNESS:

Treasury Board: A. R. Bailey, Organization Adviser to the Secretary.

REPORT OF THE COMMITTEE

The Queen's Printer, Ottawa, 1969

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Leonard
Aseltine	Desruisseaux	Macnaughton
Beaubien	Gelinas	Molson
Benidickson	Giguère	Phillips (<i>Rigaud</i>)
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Isnor	Welch
Connolly (<i>Ottawa West</i>)	Kinley	White
Cook	Lang	Willis—(30)

Ex officio members: Flynn and Martin

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, March 25, 1969:

"Pursuant to the Order of the Day, the Honourable Senator Langlois moved, seconded by the Honourable Senator Roebuck, that the Bill C-173, intituled: "An Act respecting the organization of the Government of Canada and matters related or incidental thereto", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Langlois moved, seconded by the Honourable Senator Roebuck, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, March 26th, 1969.

(34)

At 9.30 a.m. this day the Standing Senate Committee on Banking, Trade and Commerce met to consider Bill C-173, "An Act respecting the organization of the Government of Canada and matters related or incidental thereto".

Present: The Honourable Senators Beaubien, Burchill, Connolly (*Ottawa West*), Croll, Desruisseaux, Haig, Hollett, Isnor, Kinley, Macnaughton, Phillips (*Rigaud*), and Welch—(12).

Present, but not of the Committee: The Honourable Senators Denis, Langlois and Smith—(3).

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Upon motion, the Honourable Senator Phillips (*Rigaud*), was elected *Acting Chairman*.

Upon motion, it was *Resolved* to print 800 copies in English and 300 copies in French of the proceedings of the Committee on the said Bill.

The following witness was heard:

Treasury Board:

A. R. Bailey, Organization Adviser to the Secretary.

Upon motion, it was *Resolved* to report the said Bill without amendment.

At 11.00 a.m. the Committee proceeded to the next order of business.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, March 26th, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill C-173, intituled: "An Act respecting the organization of the Government of Canada and matters related or incidental thereto", has in obedience to the order of reference of March 25th, 1969, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

LAZARUS PHILLIPS,
Acting Chairman.

**THE STANDING SENATE COMMITTEE ON BANKING,
TRADE AND COMMERCE
EVIDENCE**

Wednesday, March 26, 1969.

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-173, respecting the organization of the Government of Canada and matters related or incidental thereto, met this day at 9.30 a.m. to give consideration to the bill.

Senator Lazarus Phillips (*Acting Chairman*) in the Chair.

The Acting Chairman: Honourable senators, the intention is to proceed, with your concurrence, with Bill C-173, which in short term is described as the Government Organization Act, 1969. May we have the usual motion to print?

Upon motion, it was *resolved* that a verbatim report be made of the proceedings and that 800 copies in English and 300 copies in French be printed.

The Acting Chairman: Honourable senators, the gentleman who will explain this bill in some detail is Mr. A. R. Bailey, Organization Adviser to the Secretary of the Treasury Board.

Mr. Bailey, as you are probably aware, this bill has received second reading in the Senate and is now before this committee for detailed examination. Would you be good enough to give us a basic analysis of the bill and reference to any details thereof to which you think we should give particular attention. You will also be good enough, of course, to answer any questions which may be put to you.

Mr. A. R. Bailey, Organization Adviser to the Secretary of the Treasury Board: Mr. Chairman and honourable senators, the bill makes provision for the establishment of five new departments of Government. I think the five new departments all represent attempts to consolidate existing components of Government agencies, either complete departments or portions thereof.

For example, the new Department of Regional Economic Expansion is formed by combining elements from four ministries and for the first time groups the agencies involved in facing or working on the problem of regional economic disparity, placing them all under one minister and in one department.

The Department of Fisheries and Forestry, on the other hand, combines two departments of Government which traditionally have been well known for many years. The Fisheries and Forestry portfolio brings together two departments traditionally concerned with renewable resource problems and as such provides a focus through one minister on renewable resource problems.

The Department of Communications is one which looks more towards the future. It brings together traditional agencies, such as the Post Office Department, but it also concerns itself mainly with bringing together elements which have been working on and concerned with the communications problems of the country. The largest component in the new Department of Communications, apart from the Post Office Department itself, is the group from the Defence Research Board, the Telecommunications group, and another group from the Department of Transport. These two together constitute the main communications elements in this new ministry.

In the new Department of Industry, Trade and Commerce, we have a new ministry which simply combines two departments of Government. The Department of Trade and Commerce has a long history in Government operations over many years. The Department of Industry, on the other hand, was formed in 1963 and at that time brought together various scattered components of staff which were concerned in work on industrial development activity. It put considerable emphasis on bringing together staffs from elsewhere in the Government which were working on problems of industrial research and supporting

efforts at product development and process development in Canadian secondary industry.

The Department of Supply and Services is being formed mainly as a result of the recommendations of the Glassco Commission. Honourable senators will remember that the Glassco Commission in 1962 placed considerable emphasis on the virtue of consolidating supply and common services throughout the federal Government, and at that time certain steps were taken to start this process in the Department of Defence Production.

However, it is only with the advent of this proposed legislation that it will be possible to bring together the legislative mandate and the components to form a common service agency that will truly be in a position to carry forward this program of consolidation, which, as Glassco pointed out, should represent considerable administrative savings and benefits to the federal Government.

Now, the first five parts of the bill constitute the major changes in the sense that each one of them creates a new ministry. The remaining parts deal with lesser, but not necessarily unimportant, changes. Indeed, some of them, I think, are quite significant. For example, the changes in respect to the Department of Consumer and Corporate Affairs provide added capabilities to that ministry by bringing into it elements from elsewhere in the service. For example, the Standards Branch in the Department of Trade and Commerce, as a result of this reorganization, was moved into the Department of Consumer and Corporate Affairs. With the moving of the Standards Branch this does provide the new department with a field force and the capability to engage in a much more effective consumer-type activity in regard to ensuring that standards are adhered to, and, presumably, carrying forward consumer protection activity.

The changes in Part VIII respecting the Medical Research Council bring the Council itself under the responsibility of the Minister of National Health and Welfare. This is the basic change. There is no substantive change in the corporate status of the Medical Research Council. In this respect it will operate very much as it has for the last several years. However, it will provide the Minister of National Health and Welfare with a better opportunity to co-ordinate departmental activities along with the activities of the Council itself.

The changes relating to the Science Council are designed to place the Science Council on the same footing as the Economic Council now is. That is, it becomes a separate employer for its staff and it has the authority to publish in its own right. These changes, I believe, are designed to give it more effectiveness by having its own secretariat and staff capable of doing some of the necessary support work on behalf of the Council itself.

The changes in respect to the Royal Canadian Mint are designed to place the Mint in a better position in two respects: First of all, by making it a Crown corporation, it should be able to manage its activities more efficiently in respect to adjusting to the fluctuating demands for coinage and currency; secondly, I think there is the intention that it will also be able to engage in a certain amount of export activity on behalf of the Government regarding demand by other countries for coinage.

As you probably know, there is a considerable interchange among countries with respect to coinage requirements, and putting the Mint on a Crown status should enable it to operate more effectively in respect to opportunities in foreign markets for coinage.

The change in regard to the ferries legislation simply moves the responsibility from the Department of Public Works to the Department of Transport. I think it is a relatively minor change, but it does identify licencing of ferries with the Minister of Transport who is obviously more concerned from a viewpoint of transportation, generally.

Parts XII, XIII and XIV represent small changes which perhaps we could go into, if it is so requested. Part XV, in effect, covers all the transitional changes that are a result of bringing forward such a sizeable piece of legislation. There are a lot of involvements with each of the five new ministries with legislation they are responsible for, and, quite naturally, most of these changes had to make transitional recognition for the changes of ministry and for provision to have existing acts continue in full effect under the new ministries being established.

Mr. Chairman, that is all I have to say as an introductory comment.

The Acting Chairman: Thank you, Mr. Bailey. Before honourable senators question you, may I put this one general question to you: With the reorganizations effected in existing departments and with the creation of new

departments, have you available any information with respect to the amount of personnel that will now be employed by these various departments as compared with what the position was before? Put differently, my question directs itself to the question as to whether, in the organization of these departments, we are dealing with the question of efficiency in administration aside from the mere question of symmetry in organization.

Mr. Bailey: Well, Mr. Chairman, I think, if you look at the five ministries being established, that in no instance has there been any increase of staff as the result of forming the ministries. In three cases the staffs involved have been reduced. I think the reorganization in total has resulted in savings. For example, in the case of the Department of Industry, Trade and Commerce I believe the initial savings in that particular case exceed \$1 million, although it is extremely difficult to arrive at precise figures of total savings because it is not really possible to make a specific determination until the changes have actually been carried out and a certain period of time has elapsed in which to determine how much savings will actually have been made.

I think, for example, in the case of the Department of Supply and Services the formation of the ministry would result in major savings into the future. Indeed, the purpose behind the consolidation of the common service element in government is to pursue economies of scale. As you well know the Glassco Commission documented the general case for the extensive savings that might be made by carrying out such a program. For example in the last three years I believe the Department of Defence Production has made significant savings in various areas where they have introduced consolidated activity. One example I might mention is the savings that have resulted from the formation of their central traffic management group where they have been instrumental in reducing costs associated with freight movement on supplies among departments of government. I think generally, however, the service savings is a saving into the future and as the Glassco Commission suggested if you organize an agency that has the mandate to consolidate common services and give it the legal status to operate into the future it is bound to make substantial savings on behalf of the government simply because it is in the position to introduce economies of scale. I know that the department does keep track over the detailed

savings that it feels are directly related to its efforts of common service activity, and I am sure that in the future there will be more and more specific comments and reports by that department on the savings it has generated as a result of its common service efforts. Some of the major efforts, however, in this reorganization, I think are directed not so much towards efficiency but towards creating more effectiveness in government operation, effectiveness in the sense of wanting to achieve the goals and objectives established by government in various program areas, and I think most particularly that the Department of Regional Economic Expansion is the best case in point. Obviously the criteria for judging this merger or reorganization is the extent to which it will enable the government more effectively to reach some of its objectives that it is setting for itself in respect to solving problems of regional economic disparity. This gets you more into assessment of economic and social objectives and less into the field of efficiency and administrative savings. In the case of regional economic expansion I do not think there are any significant administrative savings as a result of this merger.

The Acting Chairman: Thank you. Senator Burchill?

Senator Burchill: Mr. Bailey, I am interested in the Department of Regional Economic Expansion. I understand the Atlantic Development Corporation is going to disappear under this, is it?

Mr. Bailey: No. What is happening is this; part of the staff of the Atlantic Development Board has been merged into the new department. Indeed Dr. Weeks, the executive director of the Atlantic Development Board, is assuming a very much senior executive position in the ministry and all of the staff that he had with the Board are with him or will be with him in the new ministry. In addition, as you know, the legislation makes provision for an Atlantic Development Council and the Council in effect will provide for and have the same counselling and policy guidance value that the Atlantic Development Board had.

You will probably note from the debate in the House of Commons that they are intending to appoint Professor Smith as chairman of the Atlantic Development Council, and I think from the debate in the House everyone seemed to agree that he was a highly qualified individual...

Senator Burchill: Yes, indeed. I know him well, and that is the case.

Mr. Bailey: And that his efforts will greatly enhance the work of the council, and the competence that resides in the staff of the Atlantic Development Board will be very much part of this new ministry.

Senator Burchill: The Atlantic Development Corporation did a good job, and I was sorry to think they were going to be abolished, but now it appears they are not.

Mr. Bailey: The people that were there are still there. Indeed to the extent that they are now merged with the personnel of the area development agency and the personnel of ARDA and to the extent that in the new ministry they are all inter-related one with another it should be possible to get increased benefits from their ability and from their policy-thinking and development.

Senator Burchill: I have one other question; is the Industrial Development Bank to be transferred to the Department of Industry?

Mr. Bailey: Trade and Commerce? No. The Industrial Development Bank is an agency reporting through the Bank of Canada.

Senator Burchill: There is no change there at all?

Mr. Bailey: There is no change with regard to the Industrial Development Bank at all.

Senator Burchill: When you say that regional development is concerned, that in my mind is the change. If you induce an industry to go into one of these areas, they generally have to have financial assistance and if you have not got the wherewithall through the Industrial Development Bank as an agency to provide that assistance you are out of luck.

Mr. Bailey: As you know, sir, under the provisions of part IV of the Regional Economic Expansion legislation they have very extensive powers of assistance in that legislation and indeed in regard to grants or loans directed towards industrial development perhaps it will have a capability here that exceeds that of the Industrial Development Bank itself. In effect I do not think the problem of regional economic disparity is dependent on the Industrial Development Bank's position or capability. In other words, the new department has its own authority to enter into arrangements for industrial development assistance.

Senator Burchill: Does that mean they would have the power to lend money to industry?

Mr. Bailey: Yes, I think.

Senator Burchill: Regardless of the Department of Industry?

Mr. Bailey: I think if we might turn to section 27(1), on page 10, you will note there that:

The Minister, with the approval of the Governor in Council and subject to the regulations, enter into an agreement with any province providing for the payment by Canada to the province of a grant or loan in respect of a part of the capital cost of establishing, expanding or modernizing any work or facility for the economic expansion of a special area.

In effect, that is the designated power to enable the new department to engage in extensive industrial development activity in a special or designated area.

Senator Desruisseaux: Is this without limitations?

Mr. Bailey: No, I think the power is here. The intention is to pass specific legislation. I believe that specific legislation will be presented in the immediate future in regard to their industrial incentive activities, but this is the specific power resident in the main statute to entertain this type of program.

Senator Burchill: I was wondering how this would work out in practice.

Mr. Bailey: There has already been rather extensive experience in this regard. As you know, the Area Development Agency, which was a component of the Department of Industry, engaged in extensive incentive loan and grant activity respecting industrial development generally in designated areas. That experience, going back to 1964, has been built on. As you know, all the people who were skilled in handling this type of program will now be part of the new ministry and, as such, will be able to carry forward this program of lending and granting in regard to industrial development.

Senator Burchill: Will that division of the Department of Industry become part of the new department?

Mr. Bailey: Yes. Indeed, it is already part of Mr. Marchand's responsibilities. On June

12, under the Transfer of Duties and Powers Act, the Area Development Agency was moved to his portfolio, which currently is Forestry and Rural Development; but that component is also part of the Department of Regional Economic Expansion.

Senator Hollett: Could you tell me what are the real reasons behind changing the ADB to the ADC? Has the ADB gone down the drain, or what?

Mr. Bailey: No, sir, I think it was not a matter of going down the drain. I think it was a matter of special components coming together—ther Area Development Agency component, the Atlantic Development Board Secretariat component, the ARDA component, indeed the PFRA component, as well as some minor transfers. For instance, there was a small component from Manpower and Immigration. All these were involved in a complementary way with programs related to regional economic disparity. I think it was decided, with the merger of all these groups, that the Atlantic Development Board should become part of an integrated department in terms of its staff, but regarding the concept of a Maritime council engaging in and participating in policy development and formulation and guidance and direction in respect of the problem, it was felt that this could well be done by this council.

Really I think the Atlantic Development Council is a very true successor to the board itself. The real distinction is that the board, which had its own staff, will now be served by the staff of the entire department and, to that extent, they probably have more teeth and more assistance to do detailed examination of problems they regard as important and meaningful to the Atlantic region.

So, I do not think anything is lost. Indeed, I think there is a lot of positive gain by the present arrangement going forward as suggested.

Senator Isnor: If I followed Mr. Bailey correctly, there were 17 organizations now merging into five departments, is that right?

Mr. Bailey: I am not exactly sure of the total number, but that would be a reasonable figure—approximating that, yes.

Senator Isnor: Coming from the Maritimes, as I do, Mr. Chairman, I was interested in the same question as was raised by Senator Burchill, namely, doing away with what we look upon as a connecting link with developments

in so far as the Maritime provinces are concerned. I venture to say that in a year or less you will not hear anything of the Atlantic Development Board, as such; it will just be merged into a large organization, without any definite regional objective in mind. I think Senator Burchill will agree with me, that we were very proud of and pleased with the manner in which the Atlantic Development Board was operating, and I am concerned as to whether, with the losing of its identity, we will not have the same attention paid to our problems in the Atlantic provinces as we did under the ADB.

I heard what Mr. Bailey had to say, that the same staff will be operating, but there will be a different atmosphere altogether, and they will not be concentrating their efforts on the region in which they were intended to operate, namely, the Atlantic provinces. What do you say to that?

Mr. Bailey: If you look at the act, the legislation itself, you will see that there are ten clauses, clauses 29 to 39, in the legislation which deal specifically with the Atlantic Development Council. There are a further ten that deal with that department generally. In effect, if you were to look at the legislation you would see that it clearly makes detailed provision for this focus on the maritime problem through the Atlantic Development Council. I think the first thing that is clear in the legislation is the fact that it makes provision for the special nature of the maritime situation.

The next factor here, in my opinion, is to view what has been happening over the last five years. For example, the Area Development Agency, which was not a part of the Atlantic Development Board, always had a major interest and a major program in the maritime region. What I am suggesting, in effect, is that there were other activities concerned with the maritime regional disparity problem which were well outside the Atlantic Development Board, and which in terms of the last several years have been vigorously pursued by other ministers and other elements.

Senator Isnor: Such as?

Mr. Bailey: Well, I think the Area Development Agency is a prime example, and I think to a lesser extent ARDA. ARDA has been very active in New Brunswick. Certainly the recognition of these other elements is important to the total consideration, and I

think that the best intent and the best spirit in respect to this bill is one that has attempted to increase the focus of interest on the Maritime problem. Indeed, Mr. Levine and the staff formerly with the Area Development Agency as well as Dr. Weeks and all his staff, plus the elements and the staff in the ARDA operation are now involved in the ministry, where the Atlantic Development Council has a very dominant position. I think there is a much increased emphasis on the Maritime problem, and I think the fact that they are now all in a position to be integrated and co-ordinated by one minister will mean a great deal of greater effectiveness in respect to all the regional disparity programs that are directed through this department.

Senator Isnor: Well, I hope you are right, Mr. Bailey. I think we are following the example of the large corporations in this amalgamation process. The trust companies are amalgamating, the insurance companies are amalgamating, and, of course, we all know that the large departmental stores are trying to grab up the small ones. I think the same thing applies so far as that first group is concerned, because it seems that there are something like nine organizations merged into one. I still believe, notwithstanding what you have said, that we will miss the direct influence of the Atlantic Development Board in our region.

Would you care to comment, Mr. Bailey, on what I have said—or did I say anything worth while?

Mr. Bailey: Certainly this concern in respect of the Atlantic Development Board...

Senator Isnor: I am from Nova Scotia, by the way.

Mr. Bailey: ...was clearly registered in the debate in the House of Commons. I think that if you look at the operation of the Atlantic Development Board you will understand that it was essentially a board composed of highly esteemed Maritimes citizens who were concerned about the general problem area. They had their secretariat and their resource funding, which they were directing towards the resolution of these problems. I do not think that that has really in any way changed. Indeed, we still have the provision for a council. It can be equally good as, or better than, the old board in terms of its membership. There is nothing preventing the members of that council from being as highly

knowledgeable and effective as the previous board. Certainly when it comes to the staff I think there is very little likelihood that Dr. Weeks and his staff are going to be swallowed up by the larger group. Indeed, it is quite clear that the skill and understanding of Dr. Weeks and his staff is very much a key element, and a prominent element, in the new agency.

Senator Connolly (Ottawa West): They continue, do they?

Mr. Bailey: Yes, they continue, and in this sense it seems to me to be a strengthened rather than a weakened situation.

Senator Connolly (Ottawa West): We may be a little unfair to Mr. Bailey here, in so far as we are talking about policy, and an official should not be asked questions about policy.

The Atlantic Development Board, when it was originally set up, had no money allocated to it, and subsequently it did have a sum of money allocated to it which was to be used for its own purpose, and which it has used subject to the approval of the Governor in Council. The situation is now going to be—and this is perhaps the gut problem, so to speak, involved in Senator Isnor's comment—that whereas before there was a specific amount allocated to the Board, the council, now being part of the department, will simply participate in the department's estimates.

Mr. Bailey: Yes.

Senator Connolly (Ottawa West): And those estimates for the undertakings and programs in the coming year will be what the minister considers to be proper in the circumstances. Will the decision as to the amounts required be made in approximately the same way under the new system?

Mr. Bailey: Well, I think essentially under the previous arrangement it was still a matter of the Government's determining how its budgetary resources were to be allocated. That process is not being changed. The Government still has to decide how much of its financial resource it is willing to devote to the total regional economic disparity problem or program. Having done that, of course, the minister and his officials must make their recommendations as to the apportionment of their resource to the various problems that come under their jurisdiction.

Senator Connolly (Ottawa West): Would you have, by any chance, a statement of the

various amounts that have been allocated annually to the Board since these allocations were started?

Mr. Bailey: No, I am sorry, sir, that is one particular piece of information I do not have. I can get it, but I am not privy to it.

Senator Connolly (Ottawa West): The other point is really not a question but a comment. It arises out of what Senator Isnor said. I think there is a danger that the Atlantic problems will perhaps be obscured a little because the new department will be concerned not only with the Atlantic region but with regions now covered by PFRA, perhaps PFAA, and you mentioned two or three others. This is something that I think should be put on the record here to emphasize its importance.

There was one other aspect, though, that did concern me, and I thought particularly of the Maritimes when I read it in the press. You may not be in a position to comment, Mr. Bailey, but I understood that the former idea of the designated area was to take an area not developed and try to inject some development into it, much as is being attempted in under-developed countries, where the skills are not there, perhaps the resources are not as readily available, and perhaps the transport facilities are inadequate, or for other reasons. As I understand it, instead of that the reorientation of that designated area program will be focused on areas where there is more development because you can make more progress. I do not suppose you need much more help in development around Toronto, Montreal, Southwestern Ontario, Vancouver, or some of our other larger centres. Can you make any comment at all on this proposed new orientation?

Mr. Bailey: It has been suggested by Mr. Marchand that the concept of major growth centres is a more attractive and effective way of encouraging development, which will do something substantive to correct the disparity problem. As I understand it, the concept of the growth centre does not specifically tie itself to the more rigid unemployment criteria that were always associated with the ARDA designated area scheme. Essentially what has happened, as I understand it, is that they have learned, or are learning, from their experience during the last five or six years. They are attempting in their special area designation concepts—this is under section 24 of this part of the legislation—to take the best

experience from their designated area activity and, in effect, develop more effectiveness in the way they handle industrial development, incentives and activities designed to encourage growth. I think the problem of scale, the ability to trigger adequate growth in a growth centre, is probably the new dimension in current thinking, and this in itself will undoubtedly make a major improvement in the whole program of assistance to these areas.

Senator Connolly (Ottawa West): That raises two questions in my mind. The first is this. If this is going to concentrate on growth areas, does that mean that areas where there is little prospect of growth will be depopulated, that people will be attracted from those areas with or without training and, not put into the new growth areas, but attracted there? I think that would be the first problem that flows from the new concept.

Mr. Bailey: I think a key factor, apart from the growth centre concept, is the pronounced emphasis in the legislation, as was brought out in the debate in the House of Commons, on federal-provincial co-operation. Indeed, it is quite clear that co-operation with the provinces is a key element in this whole scheme, and I suspect that the provinces will have a great deal to say about how the growth centre concept emerges.

Senator Connolly (Ottawa West): Are we encouraging federal and provincial authorities to develop huge urban centres and demolish small towns and villages? Is that the trend? Are we working towards the encouragement of greater urbanization? I cannot ask you to say what the policy is. All I can ask you to say is whether it seems logical from a layman's point of view that this effect will flow from this legislation.

Mr. Bailey: I think the growth centre will undoubtedly bring a focus on smaller cities, smaller communities, and there is a clearer growth concept in that type of plan. I believe that mobility problems have to be related to the proximity of these growth centres to the smaller communities that conceivably might lose people to a larger centre. It is a matter of the regional analysis of the problem. Traditionally there has always been so much emphasis on large urban centres like Toronto and Montreal, drawing all the people. I think one should also consider the smaller city drawing people more locally or regionally.

Senator Connolly (Ottawa West): This is precisely the point that I am making. Is the legislation written to make Montreal and Toronto bigger?

Mr. Bailey: No, I think it is very clear that the concept of the special area and the concept of the growth centre is not directed to the Toronto or Montreal area. Indeed, quite the reverse.

Senator Connolly (Ottawa West): Quite the contrary.

Mr. Bailey: Yes.

Senator Connolly (Ottawa West): I think that is a salutary thing. Two areas that were very much in the minds of the policymakers when the designated area program and the disparity problem arose were northeastern New Brunswick and the interlake region in Manitoba. I gather that the centre of attention is not going to be in areas like that where there is, practically speaking, nothing and where they would have to start from the beginning and perhaps remake an area, but rather they are going to start from regional areas of potential growth and attract from the region the people that are required to develop. Is that a fair way to say it?

Mr. Bailey: I think that is a reasonable way to say it. However, I think we must note that North America is entering the era where complete new cities are being planned, built and developed in open areas. As you know, cities of 50,000 to 100,000 are being planned and built. There are three or four in the United States, and I think this is just the forerunner of more urban development that is essentially going into open ground.

Senator Connolly (Ottawa West): We are all in favour of more cities, but I do not think we are in favour of increasing the size of our biggest cities. Thank you Mr. Chairman.

Senator Desruisseaux: I would like to ask Mr. Bailey a general question. The Glassco Report was made in 1962. Will this bill be commending all the pertinent recommendations of the Glassco Report?

Mr. Bailey: Well, sir, a great many of the Glassco recommendations have already been put into effect. Indeed, what this legislation will do in respect to supplying services is advance many of these recommendations and accelerate the speed with which they intend to carry forward complete programs of com-

mon service consolidation. For example, in 1964 and 1965 they did start to consolidate purchasing under the terms of this new legislation. That program will undoubtedly accelerate. The Glassco recommendations have just started in many places and have not had time to be developed. They will now be extended and expanded throughout most of the areas of the service.

The Acting Chairman: Further to Senator Desruisseaux's point, does this legislation traverse the entire terrain which was previously not covered in the Glassco recommendations? In other words, we may expect further legislation on this score or does this really cover the ground?

Mr. Bailey: This does not cover it completely. I think there are other recommendations made by Glassco that are still not fully carried forward. There have been literally hundreds of detailed changes recommended and I think this will cover the vast majority. However, Glassco made extensive comments on property management for example, and that problem is still not carried forward.

Senator Desruisseaux: My question, Mr. Bailey, was to know whether we are setting aside some of the Glassco recommendations or are we taking into account all of them?

Mr. Bailey: I think this legislation takes fully into account and almost in direct line with what they recommended and carries it forward to implementation.

Senator Desruisseaux: Thank you.

Mr. Bailey: For example, they did recommend the consolidation of purchasing. This legislation legally does that.

Senator Desruisseaux: Under Part IV, those appointed to the Atlantic Development Council really have no power or duty, but their function as a council is set out in clause 31. That is all I see.

Mr. Bailey: Well, essentially they are an advisory council designed to assist the minister in the formulation of policy. It is true they have no executive responsibility in their own right.

Senator Connolly (Ottawa West): They used to have.

Senator Desruisseaux: For recommendations.

Mr. Bailey: No.

Senator Connolly (Ottawa West): But the board did.

Mr. Bailey: Yes.

Senator Hollett: Mr. Chairman, I note this act is called an act respecting the organization of the Government. I prefer to call it the reorganization. In that connection would you give us some idea as to the increase that this will cause in the Public Service and the approximate cost of same I take it you have figured that out.

Mr. Bailey: Well, as I mentioned previously, the organizations represented by this bill do not represent an increase in staff. Indeed they represent a decrease.

Senator Hollett: There would be no increase then?

Mr. Bailey: No increase. The merging and consolidation have resulted in net decreases.

Senator Isnor: To what extent?

Mr. Bailey: They are not substantial, although I indicated in the case of Industry, Trade and Commerce that I believe the total saving in staff and otherwise will exceed in the neighbourhood of \$1 million.

Senator Hollett: There are five additional ministers or so, are there not?

Mr. Bailey: No, there are no additional ministers. We have established five new ministries and have eliminated five others.

Senator Connolly (Ottawa West): There is no more room at the council table for ministers' chairs.

The Acting Chairman: Are there any further questions, honourable senators?

Senator Beaubien: Mr. Bailey, if you have fewer bodies on the payroll by putting them altogether and reshuffling, is anybody left off and does a place have to be found somewhere else?

Mr. Bailey: There has been a redundancy policy developed as a result of the reorganization, and I think most of the people who were declared redundant by the mergers have been nearly all fitted into other jobs becoming available in the service. The problems of turnover in the service are such that it has not been too difficult to make rearrangements for people who have had jobs declared redundant.

Senator Burchill: Following Senator Connolly's (Ottawa West) questions, which I followed with much interest, the policy I understand, according to Mr. Marchand's explanations, and particularly his statement made before the Federal-Provincial Conference, is that the tendency now is rather towards growth centres such as the cities and towns rather than try to industrialize outlying regions which do not lend themselves to being industrialized. All of this I think is sound and I agree with it. But does not this conflict very much with what ARDA has been doing in the development of these outlying regions? A tremendous amount of work has been done in northern New Brunswick and some of us questioned very much whether anything would be done there. But that policy has been carried out in the past. Is this a reversal of that? Perhaps you should not answer that, as to whether that is good policy, but I am putting it to you, anyway.

Senator Connolly (Ottawa West): You do not have to ask it as a policy question. Say "does it arise out of the legislation" and you get around it.

Mr. Bailey: I expect that the best way of answering the question is to say that ARDA and the industrial incentive scheme are complementary. The attempt to do something meaningful about the depressed and underdeveloped agricultural areas, to entertain schemes to raise the level of income and make them more productive and effective, can certainly complement efforts in cities to develop new plants and new products.

I think the complementary relationship is one of how the manpower mobility schemes are handled. Of course, if the two can be coalesced and managed in an integrated fashion, then surely both elements of the program gain. I think this is one of the key points behind the establishment of the ministry—one man, one minister is now in a position to entertain direction and judgment over this whole process.

This was much more difficult, as you can understand, when the minister responsible for ARDA was not the minister responsible for industrial incentives, who was not the minister relating to the Atlantic provinces development.

The Chairman: I think that your ability in answering questions entitles you to ministerial status.

Senator Connolly (Ottawa West): You are a diplomat. I would like to direct attention to page 42, where the salaries of ministers are outlined. Are there any specific changes there? I think the Leader of the Government in the Senate has had his rate of indemnity or remuneration, because he is Leader, been increased. Are there any other changes?

Mr. Bailey: No, other than the ministry name changes associated with the five new departments.

Senator Connolly (Ottawa West): But in so far as amounts are concerned, the amounts are exactly the same?

Mr. Bailey: Yes.

Senator Connolly (Ottawa Est): Except for the Leader of the Government in the Senate?

Mr. Bailey: That is right.

Senator Connolly (Ottawa West): Which is increased from what?

Senator Langlois: Really speaking, it was not provided for under the Salaries Act. The salary was provided under the House of Commons Act.

Mr. Bailey: There was no provision before.

Senator Connolly (Ottawa West): What was the provision before?

Mr. Bailey: I am sorry. I should know that, but I do not.

Senator Smith: I suggest that Senator Connolly would know.

Senator Langlois: It was \$10,000 before under the House of Commons Act.

Senator Connolly (Ottawa West): I know I was paid \$8,000 less than all other cabinet ministers, other than ministers without portfolio. I was probably worth that much less.

The Chairman: The Chair does not accept that conclusion.

Senator Connolly (Ottawa West): The fact is that the indemnity of the Leader of the Government in the Senate as such has been increased from perhaps \$12,000 to \$15,000—who knows?—what is it—or is it \$10,000 to \$15,000?

Senator Hollett: I am not sure.

Mr. Bailey: I believe the differentiation was \$5,000.

Senator Connolly (Ottawa West): So it will now be that instead of getting \$8,000 less than other ministers with portfolio, he will get \$3,000 less than other ministers with portfolio—but the reason for the \$3,000 differential is the fact that in the Senate the expense allowance is \$3,000 and in the house it is \$6,000.

The point I want to make and put on the record is this. I have no objection whatever, and I think it is a very good thing, that the Leader of the Government in the Senate should be recognized for pay on the same scale as a minister who has a portfolio to administer. I say this because of my own experience. I think the management and conduct of the business of a house of 102 people—sometimes *prima donnas* of all kinds, certainly people who have conflicts of interest, one side with another and one group with another, and all the rest of it—and the conduct of the house, is as difficult and requires a skill that is as great as the skills of many ministers with portfolio. I want to see that on the record.

The second thing I want to say is this, and I know that we cannot ask Mr. Bailey to do this. Moreover, we cannot do it. However, I tried to accomplish this, and I think it should be done. There should be special financial recognition given to four other people in the Senate—the two deputy leaders, one of the Government, the other of the Opposition, and the two whips, one on the Government side and one on the Opposition side. For the record, I want to have this done, because I would like it to go back to the Treasury Board and I would like it to be considered.

It is only fair that this kind of thing should happen, because the Leader of the Government in the Senate is the only cabinet minister who is in that body and almost every other cabinet minister has a parliamentary assistant who gets a special allowance, an extra \$4,000.

I think the department leaders on the Government and on the Opposition side, who have a good deal of the responsibility and the work load to carry, should have some extra compensation on that account, and the whips, who are responsible for running the operation as the Leader of the Government wants it run, should also get some recognition, financially. I think that should probably be in the neighbourhood of \$2,000 per annum.

I have one question only. I wondered why it was necessary to put in a new section 13A in clause 98, page 43 of the bill.

Mr. Bailey: I would not want to reply to that question, sir.

Senator Connolly (Ottawa West): Is it only because of the vacation of the seat?

Mr. Bailey: No. I had it explained to me. It is too bad we do not have here Miss MacDonald from the Department of Justice. She could give the detailed explanation. The explanation given to me did seem to be very precise.

Senator Connolly (Ottawa West): It may arise from the fact that, if you are a member of the Senate or the House of Commons and take a payment of some kind, then you do offend against the act and your seat is in jeopardy. Perhaps it is intended to cure that situation.

Mr. Bailey: Yes.

Senator Connolly (Ottawa West): I had thought that section 14 of the Senate and House of Commons Act was enough. Certainly, it has been enough up to now. Well, perhaps the Law Clerk could get us that information.

The Acting Chairman: Honourable senators, if there are no suggested amendments, and no further questions, I should like to ask the guidance of honourable senators as to whether we should take the bill clause by clause or move the bill be passed as a whole.

Senator Connolly (Ottawa West): Mr. Chairman, I move that the bill be approved without amendment.

Senator Desruisseaux: I second that motion.

The Acting Chairman: All in favour please indicate in the usual fashion. The bill is

passed. Thank you, honourable senators. Thank you, Mr. Bailey. You have been very helpful.

Senator Connolly (Ottawa West): Mr. Chairman, before we adjourn I wonder if we could revert to the discussion in connection with clause 98, page 43 of the bill. This clause repeals section 14 of the Senate and House of Commons Act and substitutes a new section 13A. The marginal note reads: "Seat of member not vacated by accepting certain travelling expenses."

I am informed that members of the Senate were not included because section 16 of the Senate and House of Commons Act applies only to members of the House of Commons. Section 16 provides that the member's seat must be vacated in the event that he accepts any office or commission or is concerned or interested in any contract or performs any service for the Government for which any public money of Canada is paid or is to be paid. That applies only to members of the House of Commons.

I am informed that the new section 13A would clarify the position of the members of the House of Commons in so far as section 16 is concerned. There does not appear to be any section equivalent to section 16 which applies to senators. This is the explanation I have just been given and I wanted to place it on *Hansard*.

The Acting Chairman: We are indebted to you, Senator Connolly, because otherwise the reading of the new section 13A might be difficult to understand by the mere reference to members of the House of Commons. Thank you very much indeed.

The committee proceeded to the next order of business.



First Session—Twenty-eighth Parliament

1968-69

THE SENATE OF CANADA PROCEEDINGS

OF THE
STANDING SENATE COMMITTEE
ON

BANKING, TRADE AND COMMERCE

The Honourable LAZARUS PHILLIPS, *Acting Chairman*

No. 32

WEDNESDAY, MARCH 26th, 1969

Complete Proceedings on Bill C-178,
intituled:

“An Act to amend the Canadian Forces Superannuation Act, the Defence Services Pension Continuation Act, the Royal Canadian Mounted Police Superannuation Act, the Royal Canadian Mounted Police Pension Continuation Act and the Public Service Superannuation Act”.

WITNESSES:

Deparment of Finance: H. D. Clark, Director, Pensions and Social Insurance.

Department of National Defence: Captain J. P. Dewis, Deputy Judge Advocate General.

REPORT OF THE COMMITTEE

THE QUEEN'S PRINTER, OTTAWA, 1969

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Leonard
Aseltine	Desruisseaux	Macnaughton
Beaubien	Gelinas	Molson
Benidickson	Giguère	Phillips (<i>Régaud</i>)
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Isnor	Welch
Connolly (<i>Ottawa West</i>)	Kinley	White
Cook	Lang	Willis—(30)

Ex officio members: Flynn and Martin

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, March 25, 1969:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Denis, P.C., seconded by the Honourable Senator Robichaud, P.C., for the second reading of the Bill C-178, intituled: "An Act to amend the Canadian Forces Superannuation Act, the Defence Services Pension Continuation Act, the Royal Canadian Mounted Police Superannuation Act, the Royal Canadian Mounted Police Pension Continuation Act and the Public Service Superannuation Act".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

With leave of the Senate,

The Honourable Senator Denis, P.C., moved, seconded by the Honourable Senator Fournier (*de Lanaudière*), that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, March 26, 1969.
(35)

At 11.00 a.m. the Standing Senate Committee on Banking, Trade and Commerce proceeded to the consideration of:

Bill C-178, "An Act to amend the Canadian Forces Superannuation Act, the Defence Services Pension Continuation Act, the Royal Canadian Mounted Police Superannuation Act, the Royal Canadian Mounted Police Pension Continuation Act and the Public Service Superannuation Act.

Present: The Honourable Senators Lazarus Phillips (*Acting Chairman*), Beaubien, Burchill, Connolly (*Ottawa West*), Croll, Desruisseaux, Haig, Hollett, Isnor, Kinley, MacNaughton and Welch. (12)

Present, but not of the Committee: The Honourable Senators Denis, Langlois and Smith. (3)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Upon motion, it was *Resolved* to print 800 copies in English and 300 copies in French of the proceedings of the Committee on the said Bill.

The following witnesses were heard:

Department of Finance:

H. D. Clark, Director, Pensions and Social Insurance Division.

Department of National Defence:

Captain J. P. Dewis, Deputy Judge Advocate General.

Upon motion, it was *Resolved* to report the Bill without amendment.

At 11.45 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, March 26, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill C-178, intituled: "An Act to amend the Canadian Forces Superannuation Act, the Defence Services Pension Continuation Act, the Royal Canadian Mounted Police Superannuation Act, the Royal Canadian Mounted Police Pension Continuation Act and the Public Service Superannuation Act", has in obedience to the order of reference of March 25th, 1969, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

LAZARUS PHILLIPS,
Acting Chairman.

**THE STANDING SENATE COMMITTEE ON BANKING,
TRADE AND COMMERCE
EVIDENCE**

Ottawa, Wednesday, March 26, 1969

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-178, to amend the Canadian Forces Superannuation Act, the Defence Services Pension Continuation Act, the Royal Canadian Mounted Police Superannuation Act, the Royal Canadian Mounted Police Pension Continuation Act and the Public Service Superannuation Act, met this day at 11 a.m. to give consideration to the bill.

Senator Lazarus Phillips (*The Acting Chairman*) in the Chair.

The Acting Chairman: Honourable senators, the next bill for consideration is Bill C-178, the omnibus superannuation bill that received its second reading in the Senate yesterday. The witnesses necessary for the purpose of explaining this bill are here, but we have suspended our meeting for a few moments only in an attempt to reach our colleague, Senator Choquette, who indicated in the debate yesterday that he might wish to get some clarification of this bill. I hope, with your indulgence, that we might wait a few minutes, even though the witnesses are here. In the meantime, may we have the usual motion for the printing of the bill?

Hon. Senators: Agreed.

Upon motion, it was *resolved* that a verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 copies in French be printed.

The Acting Chairman: May we proceed on a provisional basis and I will introduce the witnesses who are with us this morning. They are: Mr. H. D. Clark, Director of Pensions and Social Insurance Division, Department of Finance, Captain J. P. Dewis, Deputy Judge Advocate General in the Ministry of National Defence, Mr. G. C. Cunningham, Superintendent in Chief of the RCMP, and Mr. W.

Riese, Chief Actuary, Department of Insurance. I hope I have mentioned them correctly with their proper designations.

Honourable senators, you have before you copies of the old bill. We are now making copies of the amendments that were referred to in the house yesterday afternoon, and they will be available within five minutes. Therefore, we will have a complete set of the documents with regard to the legislation.

I will now call upon Mr. H. D. Clark, who, as I have already said, is Director of the Pensions and Social Insurance Division. Will you be good enough, Mr. Clark, to give us the usual survey of the bill, with particular emphasis on the most pertinent sections that you think call for our attention?

Mr. H. D. Clark, Director, Pensions and Social Insurance Division, Department of Finance: Mr. Chairman, honourable senators: Senator Denis gave you a very good description of certain features of the bill in his statement in the Senate yesterday. There is not too much more that I would need to say to bring out the more important facts, but perhaps I could just run over them again to refresh your memory.

Unfortunately, as is so often the case in these bills amending superannuation acts, the provisions are rather complicated; but I can say that these amendments provide some improvements in the benefits and remove a number of anomalies and inconsistencies which have become evident in the operation of these acts since they were last before Parliament.

Senator Hollett: When was that?

Mr. Clark: In 1966, Senator.

I might say that some of these amendments were being considered at that time, but the Department of National Defence had in mind some far-reaching changes in the structure of their benefits with which they were not pre-

pared to proceed then, but these are incorporated in this bill. Captain Dewis will be able to enlarge on those, as you desire.

The other two major changes are designed to bring the Canadian Forces Superannuation Act and the R.C.M.P. Superannuation Act in line with the Public Service Superannuation Act, from the contributions point of view.

At present the contribution under the Public Service Superannuation Act are 6½ per cent for men and 5 per cent of salary for women, less the contributions under the Canada Pension Plan. Under the Canadian Forces Superannuation Act they have been 6 per cent for both men and women, less the Canada Pension Plan contributions. And in the case of the R.C.M.P. Superannuation Act, 6 per cent and 5 per cent, respectively, again less the Canada Pension Plan contributions.

This has been the case despite the fact that the benefits are more costly under the other two acts than under the Public Service Superannuation Act. Partly because of this but also because there have been amendments which have improved benefits over the years as well as certain improvements proposed in this legislation, the Government announced its intention last fall to couple the latest pay increases for both forces with an increase in the male contribution rate to the same level of 6½ per cent as it is for the Public Service.

Senator Isnor: Does that make it uniform right across the board now?

Mr. Clark: That will make them uniform in that regard. In the case of the female members of the Canadian Forces the rate is being reduced to 5 per cent which is charged under the other two acts. So that when this becomes law the rates will be uniform under all three acts now applying to new members of the Public Service and the Forces.

Another amendment I might mention is the one that appears in each of the three main acts dealing with accounting provisions. As you may be aware, the interest that has been charged against the consolidated revenue and credited to these accounts over the years has always been at the rate of 4 per cent. The Government has in mind that this should be increased so that it is more in line with the interest rate of current bond yields. In contemplation of this a technical change had to be made in the accounting sections of the three superannuation acts, and this is proposed in three of the clauses of the bill.

The Acting Chairman: Mr. Clark, does that have an adverse effect on the beneficiary?

Mr. Clark: No, it has no adverse effect.

The Acting Chairman: It is an internal accounting item only?

Mr. Clark: In so far as its effect on the beneficiary is concerned. It has other side effects in overall budgetary considerations. In other words, the additional interest will appear as an item in relation to interest on the public debt. It will be applied to offset special budgetary charges which the Government is called upon to make on an annual basis in respect of deficiencies which the basic current contributions by the members and the corresponding contributions by the Government are inadequate to cover.

Senator Isnor: What has that amounted to, roughly on a percentage basis?

Mr. Clark: The Government contribution?

Senator Isnor: No, the difference between the two—the amount that the Government had to make up?

Mr. Clark: In the current year it is estimated that the figure will be in the neighborhood of \$220 million.

In the case of the civil service plan, the basic Government contribution is a matching contribution. In the case of the armed forces at the moment it is one-and-two-thirds times the members' contributions. At the present time in the R.C.M.P. plan it is twice the members' contributions. One of the results of this co-ordinating, as it were, of the contribution rates will be to permit the Government contribution to the Public Service plan and the R.C.M.P. to be on the same basis. But in both of those cases they will still have to be on a higher basis than the Government's contribution to the Public Service plan because basically the benefits are still better. This is largely due to the fact that the retirement ages are lower and pensions, therefore, commence at an earlier time under the other two acts than is the case with the Civil Service one.

Senator Burchill: Do I understand that that amount of \$220 million is necessary to make the fund actuarially sound?

Mr. Clark: This is the purpose of it, yes, senator. Mr. Riese, the chief actuary of the

Department of Insurance, advises us each year of the additional credits that are required—

Senator Burchill: It is done each year, is it?

Mr. Clark: That is right. He carries out a full scale valuation every five years, and then every year he keeps track of the additional liabilities arising out of pay increases that have been authorized during that year. This figure of \$200 million-odd arises from a combination of the pay increases and the latest actuarial valuation that he has made.

As I mentioned there are a few benefit improvements. One amendment that is not expensive, but which will help the persons involved, permits the continuation of the children's benefits beyond the age of 18 up until the age of 25 if the child is continuing his or her education. This is patterned on the provision in the Canada Pension Plan under which children's benefits are now being paid.

The Acting Chairman: Is this entirely new in so far as the armed forces and the R.C.M.P. are concerned?

Mr. Clark: Yes, and it is new for the civil service too—that is, the extension beyond age 18.

The Acting Chairman: Yes, to age 25, provided they continue their education?

Mr. Clark: Yes.

Senator Hollett: The Government must have been listening to the moderator of the United Church. Perhaps you are not acquainted with his views.

Senator Connolly (Ottawa West): If they are not, they should be.

Mr. Clark: Apart from that there is a provision that has been welcomed by all sides whereby the widow of a pensioner under one of these plans who remarries may have her pension, which is normally suspended on remarriage, reinstated not only in the case of the death of her second husband, as is now the case, but also in the case of annulment or dissolution of that marriage. We have run into a few cases during the last year or two where the second marriage ended in divorce, and until the husband of the second marriage died the lady could not benefit from a resumption of the pension coming from her first husband.

Senator Connolly (Ottawa West): I wonder if I could interrupt you there to ask about the situation in which the second husband, in the event of annulment or dissolution of the marriage, is well able and liable to pay for the maintenance of his wife, and where he might try to take the easy way out and say that she is getting her pension. Have you any discretion there?

Mr. Clark: This provision does not make a distinction in those cases, Senator Connolly.

Senator Connolly (Ottawa West): Another aspect of it would be where you had a marriage that broke up, and the spouse was a grasping person. Perhaps she could go to the court and get alimony and at the same time take this.

Mr. Clark: That would be possible, yes.

The Acting Chairman: Have you anything further, Mr. Clark?

Mr. Clark: Running through the notes I have here, and from my recollection of the bill and the discussion in the House of Commons, I do not believe I have anything else I want to draw attention to.

The Acting Chairman: Could you tell us, for the guidance of honourable senators, whether the amendments, copies of which you have just given us, were of a basic nature or procedural?

Mr. Clark: Three of them were purely drafting amendments. The Department of Justice, in running over the bill following first reading, concluded that the intended effect was not provided by the original wording.

The Acting Chairman: That happens often.

Mr. Clark: Fortunately we caught it in time. The other two amendments were of a purely technical nature and arose in two of these accounting provisions to which I referred. The word "quarterly" was dropped by an amendment to one clause and it should have been added to a subsequent clause in the same part of the bill. This was just overlooked. It was of no more significance than that.

Senator Hollett: How long is it since there has been any increase in the amount paid to ex-service men, for instance?

Mr. Clark: In the benefits?

Senator Hollett: In the superannuation plan. How long is it since they have had an increase?

Mr. Clark: In the benefits?

Senator Hollett: Yes.

Mr. Clark: They have enjoyed some benefit increases as a result of the 1966 legislation.

Senator Hollett: Not very much though.

Mr. Clark: No, not very much. Again in the 1959 legislation there were improvements.

Senator Hollett: Slight.

Mr. Clark: So far as the Armed Forces are concerned, I would say that probably the amendments in this bill represent the more costly amendments of the three I have mentioned.

Senator Hollett: You mean more costly to the Government?

Mr. Clark: To the account, to the plan.

Senator Hollett: I understood they had not been getting increases since 1966.

Mr. Clark: Increases in benefits?

Senator Hollett: Yes.

Mr. Clark: The simple integration with the Canada Pension Plan produced this result at a cost to the account maintained under this act.

Senator Hollett: What about somebody who cannot avail himself of the Canada Pension Plan, who retired some time ago?

Mr. Clark: If he had retired he is not subject to the increase in the contributions.

Senator Hollett: That is only one half of one per cent. Does he not get any increase?

Mr. Clark: He would get the additional protection for his children out of these amendments. Captain Dewis could tell you better than I what other changes over the years might assist the person who has already gone. Basically the extension of increased benefits to persons already retired is provided under an act like the Public Service Pension Adjustment Act rather than under this bill.

The Acting Chairman: While honourable senators are thinking about further questions, if any, as we have here technical men, particularly Mr. Riese, I should like to ask

whether consideration was given to the problem of attempting to bring about an automatic increase in benefits, having regard to the increase in the cost of living based upon the Dominion Bureau of Statistics review from time to time, rather than being obliged to proceed statutewise by way of revision?

Mr. Clark: I can safely say that the Government did consider this. Mr. Drury, in his statement at the second reading stage in the House of Commons mentioned that the present Government had requested a study of this problem and a special report, and that the report had been recently received, which report was under study by the Government. If I can quote his words, he said:

I regret to say that it has not been possible for the government to reach a decision at this time which would permit the inclusion of amendments to the Public Service Pension Adjustment Act in this bill.

This is the act I mentioned a moment ago.

The Acting Chairman: I think honourable senators would like to read into the record, if I sense the opinion of my colleagues in the Senate, that this is one of the very few instances in which increased expenditures are made with the approval of, may I say, the upper chamber, more particularly having regard to our defence forces, the RCMP and other forces protecting us, in terms of law and order, and national defence. I think there would be welcome acceptance of any statutory provisions that provided for legitimate increase, having regard to the increased cost of living.

Senator Isnor: Are you speaking of increases in salary?

The Acting Chairman: No, increases in benefits provided here, and relating them to increases in the cost of living.

Senator Isnor: They are two separate things.

The Acting Chairman: At least, that is how I sense the view of my colleagues in the Senate on that score. If I am wrong on that I should be corrected, but I should like to read into the record certainly my own view on this matter, and I think it is the view of my colleagues at large on the point.

Senator Desruisseaux: Time and again before the Senate a point has been made of the inequality in the pension plan for sena-

tors. If there are inequalities, it seems to me they should be rectified. If studies are to be conducted, I think it should be done with a view to having retroactive legislation to correct some of these injustices.

The Acting Chairman: Are there any further questions? If not, are we ready for the question to report this bill without amendment?

Senator Hollett: Before that question is put I have one further matter. Here I am thinking more of those who served overseas and came back all right who probably were retired ten years ago, say. How much superannuation or pension would, say, a private get per month or year?

Mr. Clark: I think I should ask Captain Dewis to hazard an opinion on that.

Captain J. P. Dewis, Deputy Judge Advocate General, Department of National Defence: Mr. Chairman, the amount of pension that any former member of the forces would receive is based, of course, on length of service. Your example, senator, applies to a World War II overseas veteran?

Senator Hollett: And who has been retired for ten years.

Captain Dewis: He may have been in the service before the war, but if he had war service he probably was not in the regular force or he could have transferred on October 1, 1946. A closer example would be if he had 20 years' service and was retiring. The question, of course, arises as to whether he goes out voluntarily or by reason of age. Assuming that he leaves by reason of age, we would have to know the rate of pay during the last six years of his service. Whether I could give you that, I do not know. It would only be a wild guess but he would get 2 per cent of whatever his average annual pay was for each year of service. He would be entitled in effect to 40 per cent of whatever his private's pay was. We would have to know what the pay was for the last six years.

Senator Hollett: He has no increase then.

Captain Dewis: No. If he went out in 1960...

Senator Hollett: His cost of living has gone up like yours and mine, therefore, I want to

put on the record that I think he should be considered and I raised the point.

Senator Denis: If I understand well, it is based on the six best years.

Captain Dewis: Yes. Generally, the last six years. He may have been reduced in rank.

Senator Denis: If his salary was higher than the one in 1966...

Senator Burchill: That is the principle the pension is based on. Is it the same for the RCMP and other forces?

Captain Dewis: Yes, sir.

The Acting Chairman: Honourable senators, are there any further questions?

Senator Burchill: What percentage of the pension does the survivor or the widow receive?

Captain Dewis: The widow would get half of whatever pension the husband was receiving or that he would have received if retired on medical grounds.

Senator Burchill: And the children would get one.

Captain Dewis: One-fifth of the widow's pension.

Senator Burchill: Each child. If he has five children.

Captain Dewis: Up to a maximum of four children.

Senator Hollett: In case he was injured or wounded and he was receiving also a disability pension and dies what percentage does his wife get?

Captain Dewis: She would get the same percentage of the Canadian Forces superannuation pension, that is one-half, and under the Disability Pension Act, a specified amount depending on his rank. I think for a widow it is in the order of \$2,000, \$3,000 or \$4,000.

The Acting Chairman: Are there any further questions? If not, honourable senators, are we ready for the question?

Senator Burchill: I move we report the bill.

Hon. Senators: Agreed.

The committee adjourned.



First Session—Twenty-eighth Parliament

1968-69

THE SENATE OF CANADA

PROCEEDINGS

OF THE

SENATE COMMITTEE

ON

BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 33

WEDNESDAY, APRIL 23rd, 1969

First Proceedings on Bill C-165,

intituled:

“An Act to amend the Income Tax Act and the Estate Tax Act”.

WITNESSES:

Department of Finance: J. R. Brown, Senior Tax Adviser, Taxation Branch. E. H. Smith, Tax Policy Division.

Department of National Revenue: W. I. Linton, Chief, Income Tax Division.

APPENDICES:

“A”—Letter from The Canadian Institute of Chartered Accountants to Minister of Finance.

“B”—Clipping from Montreal Star—March, 1969.

“C”—Departmental Tables with respect to proposed changes in Estate Tax.

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Leonard
Aseltine	Desruisseaux	Macnaughton
Beaubien	Gélinas	Molson
Benidickson	Giguère	Phillips (<i>Rigaud</i>)
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Isnor	Welch
Connolly (<i>Ottawa West</i>)	Kinley	White
Cook	Lang	Willis—(30)

Ex officio members: Flynn and Martin

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, April 22nd, 1969:

"A Message was brought from the House of Commons by their Clerk to return the Bill S-26, intituled: "An Act to prohibit the advertising, sale and importation of hazardous products",

And to acquaint the Senate that the Commons have passed this Bill with one amendment, to which they desire the concurrence of the Senate.

The amendment was then read by the Clerk Assistant, as follows:—

1. *Page 7, Line 6*: Delete subclause (3) of clause 8 and substitute the following:

"(3) Every order adding a product or substance to Part I or Part II of the Schedule shall be laid before the Senate and the House of Commons not later than fifteen days after it is made or, if Parliament is not then sitting, on any of the first fifteen days next thereafter that Parliament is sitting.

(4) If both Houses of Parliament resolve that an order or any part thereof should be revoked, that order or that part thereof is thereupon revoked."

The Honourable Senator Hayden moved, seconded by the Honourable Senator Bourget, P.C., that the amendment be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, April 23rd, 1969.

(36)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m.

Present: The Honourable Senators Hayden (*Chairman*), Beaubien, Benidickson, Blois, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Flynn, Gélinas, Haig, Isnor, Kinley, Leonard, Martin, Molson, Phillips (*Rigaud*), Thorvaldson, Walker, Welch, White and Willis. (24)

Present but not of the Committee: The Honourable Senators Inman, Laird, McDonald, Methot and Paterson. (5)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Upon motion, it was *Resolved* to print 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill C-165.

Consideration of the House of Commons amendments to Bill S-26 and the Messages from the House of Commons disagreeing with the amendments to Bills C-155 and C-157 was deferred until a later meeting of the Committee.

The following witnesses were heard:

Department of Finance:

J. R. Brown, Senior Tax Adviser, Taxation Branch.

E. H. Smith, Tax Policy Division.

Department of National Revenue:

W. I. Linton, Chief, Income Tax Division.

It was *Agreed* that the following documents be printed as Appendices "A", "B" and "C", respectively:

Letter from The Canadian Institute of Chartered Accountants.

Clipping from the Montreal Star.

Departmental Tables respecting changes in Estate Tax.

It was *Agreed* that the Minister of Finance be invited to appear before the Committee.

At 12.15 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

THE SENATE
THE STANDING SENATE COMMITTEE ON BANKING,
TRADE AND COMMERCE
EVIDENCE

Ottawa, Wednesday, April 23, 1969

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-165, to amend the Income Tax Act and the Estate Tax Act, met this day at 9.30 a.m. to give consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: On the notice of the meeting we had included a number of bills. First, S-26, the hazardous products bill, on which the amendment was referred back to this committee. We had also included bills C-155 and C-157 that originated in the other place and to which the Senate made some amendments. The message involving the refusal of the other place to accept the amendments has been referred to this committee. Discussions are going on concerning those bills with the people in the other place who are particularly concerned about it. As a result a request was made that we not proceed with our consideration of the message in two cases, and the amendment in the other case, for a week in order to permit opportunity for further discussion. I agreed to meet the request made that we delay consideration of those bills until next Wednesday. That leaves us this morning with Bill C-165, to amend the Income Tax and Estate Tax Act. First we should have a motion for printing.

Upon motion, it was *resolved* that a verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 copies in French be printed.

The Chairman: A number of requests have been made from organizations to be heard, and briefs have been submitted. For instance, the Trust Companies Association of Canada requested that they be permitted to be heard not earlier than next Wednesday because they have meetings this week, I think today and tomorrow.

Senator Croll: Were they heard before the other place?

The Chairman: I am not aware of that.

Senator Croll: Then let us make ourselves aware of it.

The Chairman: I will in the meantime. They made representations to departmental committees.

Senator Croll: I do not mean that.

The Chairman: I told the Trust Companies Association that we would hear them next Wednesday. Then there are the Canadian Construction Association and the Ontario Branch of the Canadian Bar Association. I have also had a letter from the Chartered Accountants Association who had some submissions and wrote a letter saying they would like to be heard.

I was proposing that we go into that part of it next Wednesday and that today we would hear the departmental officers, who would be open for any general questions that you might want to put. I would suggest that we might deal first with the gift tax sections, and then if we have time we could pitch into the estate tax sections, but that we not have a complete section by section examination today after which we say "Yes" or "No" to them, reserving that until after we have heard the representations that are to be made. That is the general outline of policy, if that is agreeable.

Senator Thorvaldson: What type of representations will be made by the officials here this morning? The debate on this bill in the Senate was not so much in detail, although the bill was very well explained in detail. Consequently, I think most members of the committee are well aware of what is in it. As I understand it, the issue was the policy lying behind the enormous changes being proposed to the estate and gift tax laws that we now have, and it would therefore appear

to me that the minister should be the first person we should try to hear.

The Chairman: I had thought about that. I thought there were some questions on which we would want to hear the minister, or at least we would invite him. However, there is general information that I think we need. For instance, it is said that in order to achieve an equal amount of revenue from estate tax following the granting of these spouses' exemptions the estate tax rates must be increased by the amount in the bill in order to produce \$45 million extra. The moment the word "exactly" is used it is logical to assume that there have been calculations, and I for one would like to know what those calculations were and how they were proceeded with. I should also like to know if the calculation was made on the basis of the 50 per cent rate starting at a \$1 million estate and what would be the difference between where they have started in achieving this figure of \$45 million.

There is also the question Senator Phillips (Rigaud) raised in the house on the gift tax situation in Quebec and the provisions in the Quebec Civil Code. I would also think a matter of policy on which we should hear the minister was the point made in the house that the rates proposed should not be rates that go on in perpetuity, but that there should be a fair period of rum at them to see how they work out. They may have overestimated, they may have underestimated. Therefore, there should be an opportunity to have some time, perhaps two or three years, when the Government should be able to say what the performance has been. It may well be the performance will be such that they will achieve much more than \$45 million a year extra by increasing the rates, in which event the question arises whether they have changed their viewpoint as against giving the rate so as to produce exactly the amount they give away in the exemptions or whether they want to use this extra income for other purposes. If it is for other purposes we should have a run at it to see whether we think it is right or not.

Senator Thorvaldson: I agree with you on these large questions, that we should try to get these calculations.

The Chairman: There is a whole range of questions that these departmental officers could be asked. If any question involves policy, then obviously these witnesses must be protected because they are not in a position in which they may speak on policy. We must

have the minister on that. Is it agreed that we should go ahead in that manner?

Hon. Senators: Agreed.

The Chairman: We have here this morning Mr. J. R. Brown, Senior Tax Adviser, Taxation Branch, Department of Finance; Mr. E. H. Smith of the Tax Policy Division, Department of Finance; Mr. W. I. Linton, Chief of the Income Tax Division, Department of National Revenue; and Mr. W. O. B. H. Fleming of the Foreign Estates Section, Department of National Revenue.

The way is now open to questions of a general nature, if you like, honourable senators.

Senator Croll: Mr. Chairman, I am particularly keen to listen to the statement from the estates people, but I think the record should be complete since people will be reading this so perhaps we should have statements from each of these gentlemen and then questions can follow.

The Chairman: Well, Mr. Brown, there is one principle in this whole bill that strikes me, namely, the matter of spouses' exemptions. I would think that even the increase in rates is consequential to the granting of these exemptions. Have you any general statement to make on that?

Senator Flynn: I would suggest, Mr. Chairman, that it might be vice versa; they may have given the exemptions in order to justify the increase.

The Chairman: You mean justify the amount of the increase, yes.

Mr. J. R. Brown (Senior Tax Adviser, Taxation Branch, Department of Finance): Honourable senators, I think that I may be bordering on the edge of policy here, and I am sure you will understand that, if I do, I am really overstepping myself. However, I think that there were more purposes involved than simply providing complete exemptions of spouses and the recouping of the money. Clearly, however, that is the one that perhaps has the most effect.

There are, in addition, the provisions of larger exemptions for minor children and for infirm dependent children, and the provision of some exemptions for adult children which differentiate somewhat the tax on estates passing to children from the tax on estates passing outside the immediate family. The next issue is the linking of the gift tax and the

estate tax, and it is no secret, particularly to members of this committee, that there has been a wide divergence in the incidence of tax between those circumstances where people choose to leave property on death and those other cases where people have begun to dispose of the estate at some considerable time before death.

This is well known to anyone who has been in the field, it is well marked in the literature, and it has been the subject of considerable criticism and consternation. So the other major change that has been made is to link the two taxes in such a way that the difference between the two methods of transferring property will no longer result in such a large difference in the tax effect.

Senator Phillips (Rigaud): I do not wish to interrupt your line of thinking, but on this particular point, did the department give consideration to the fact that in attempting to correlate the estate tax and gift tax there are instances of giving by the donor not being related to, say, the estate taxes. For instance, a father wanting to take his son into a business in order to provide the incentive for that son on, for example, marriage, would be an example of what I mean. I merely ask at this stage of your presentation whether collateral social considerations of that nature were overlooked.

Mr. Brown: No, sir, they were considered and it was acknowledged that there were these reasons.

Senator Phillips (Rigaud): They were considered?

Mr. Brown: Yes.

The Chairman: On that point, Mr. Brown, would you say we would have had the proposal to integrate gift tax rates with estate tax rates whether spouses' exemptions were being created in relation to gifts in the lifetime or not?

Mr. Brown: I think the answer to that question is yes. The decision was that gift taxes and estate taxes should be linked. It is very hard, once you start a review of an existing legislation, to separate one branch of the conclusions from the other.

Senator Phillips (Rigaud): But the net result of your answer to my question is that you isolated all other considerations in considering gift tax rates and related them exclusively to estate tax problems.

Mr. Brown: That is the result of the deliberations, yes.

Senator Phillips (Rigaud): Thank you very much.

Mr. Brown: It is very difficult to determine intent in a transaction, as you are very well aware.

Senator Phillips (Rigaud): I understand. I interrupted you because I wanted to get that basic point clear.

The Chairman: To the extent that intent leads to a decision—or we would hope it does—your decision to integrate must have been preceded by an intent in the preparation of this.

Mr. Brown: Yes.

Senator Kinley: Mention has been made of exemptions for spouses and certain other legatees in estate matters. In compiling the value of the estates, will these exempted legatees have to pay a second time for the things that were made free in the first instance? Is there a second taxation?

Mr. Brown: You mean when the widow dies, sir?

Senator Kinley: Is it absolutely free? Is it taken out of the estate altogether, when you compile it? For example, if the widow gets \$20,000, that \$20,000 is added to the value of the estate for taxation purposes, is it?

Mr. Brown: Of the husband's estate, sir?

Senator Kinley: Yes.

Mr. Brown: No. It does not come into the computation of rates on the rest.

Senator Kinley: Is that also true of the other legatees, say, the children? Is that taken out of the value of the estate as well, when they compile it for taxation?

Mr. Brown: Yes, the exemptions are.

The Chairman: If I may just interrupt, Mr. Brown. Answering your earlier question, Senator Croll, there was no committee in the House of Commons except a committee of the whole. Therefore, they heard no witnesses. You may continue, Mr. Brown. I am sorry to have interrupted you.

Mr. Brown: These are, I think, the main thrusts of the bill, if I can put it that way.

Then one comes to the question of the weight of the tax.

Senator Croll: Could you just go back for a moment, Mr. Brown. Would you recapitulate the thrusts of the bill, as you put it.

Mr. Brown: Yes. There is the complete exemption of properties passing to widows and to widowers, although, obviously, the more common case is that of the widows. Secondly, there is the matter of increased exemptions to minor children and adult children dependent by reason of infirmity. Then there is some differentiation by reason of an exemption to adult children, some differentiation between those estates where the property is going within the family and those where it is going without, and, finally, there is the linking of the gift and estate taxes. Those are, shall we say, the main thrusts in quality. In terms of quantity, there is the decision as to the weight of the tax.

Senator Thorvaldson: Mr. Brown, would you mind explaining more clearly what you mean by the linking of the estate taxes and the gift taxes. Is that in amounts and rates, and so on?

Mr. Brown: Yes. Previously, senator, as you know, the gift tax has been an annual affair. The amount of gifts made in one year determined the tax for that year, but had no effect on the tax for any previous or subsequent year. The system in the bill now calls for a cumulative computation over the lifetime of the donor. This is the first stage of the rationalization of the gift tax. Finally, the amount of taxable gifts during the lifetime of the donor and after the budget date—the cumulative computation—affects the rates of taxes to be levied on the estate at the time of death. Consequently, early gifting no longer does what it used to do, which was to remove completely from the estate tax both the gift and the gift tax and, consequently, as I said earlier, there is a far lesser difference in the tax impact.

The Chairman: What you mean is that as and from October 23, 1968 this cumulative effect of gifting begins to operate.

Mr. Brown: Yes.

The Chairman: And you must carry forward the gifts so long as the donor lives.

Mr. Brown: Right.

The Chairman: And when he dies, the accumulation of those comes into the aggregate net value of the estate, is that right?

Mr. Brown: Not precisely. It comes into the computation of rates to be applied, but the effect is much the same.

The Chairman: I am wondering how you can apply the rate before you have the aggregate net value and you reduce that to the aggregate taxable value.

Mr. Brown: It is a complicated piece of machinery, but it works more or less like this. You work out the estate to be taxed, first of all. Then you have to make two Tax computations. You compute the tax which would have been levied on that estate plus the cumulative gifts. That is one computation, which gives you figure "A", if you like. Then you compute the estate tax which would have been levied if the taxable estate had consisted only of the amount of the cumulative gifts—that is figure "B". "A" minus "B" is the amount of the estate tax to be paid. The existence of taxable gifts has pushed the estate up through the rate bracket, but the gifts themselves are not taxed again.

Senator Thorvaldson: Could I ask the witness to explain further by way of an example? Let me give you the case of a deceased who has gifted, say, \$100,000 during the course of a few years—let us say, five years. Then, at the end of that period of five years he dies and has a further estate. Does that \$100,000 that he has gifted become added to the amount of his total estate for purposes of computation of estate tax?

Mr. Brown: For the purposes of the computation of the rate. If I might suggest a figure for the estate, let us assume there was a \$200,000 estate left subject to tax.

Senator Thorvaldson: Yes.

Mr. Brown: Instead of paying estate tax as though it was an estate of \$200,000, he will pay tax using the portion of the rate brackets that lie between \$100,000 and \$300,000. He only pays on the \$200,000, but at higher rates.

Senator Thorvaldson: So the gifts do come into the computation?

Mr. Brown: Yes, the gifts do come into the computation.

Senator Thorvaldson: And that has the effect of increasing the estate tax.

Senator Beaubien: But the amount paid in gift tax, that is deducted?

Mr. Brown: The gifts themselves are not taxed again; consequently, it is not deducted. We still bring back into the complete computation gifts within three years of death, but beyond the three-year period the gifts do not themselves become subject to tax on death and, therefore, that gift tax is not offset.

Senator Thorvaldson: They increase the rate on the remainder.

Mr. Brown: They increase the rate on the remainder, yes.

Senator Thorvaldson: What about the \$2,000 you can give every year?

Mr. Brown: That is not accumulated. It is only taxable gifts which are accumulated.

Senator Thorvaldson: In regard to the \$2,000 gifts, do they become taxable unless you live three years beyond the time of the gifts?

Mr. Brown: I think the short answer is: Yes. There are perhaps qualifications as to normal giving, but if they were gifts of the sort I think you are contemplating, the answer is yes.

The Chairman: If they were made within three years of death.

Mr. Brown: Yes.

The Chairman: There is nothing new in that?

Mr. Brown: No.

The Chairman: That is in the existing law.

Mr. Brown: Right. I think those are the main thrusts of the bill.

Senator Walker: Is not the main thrust of the bill that you are really introducing confiscatory legislation?

Mr. Brown: There are two things: I am not introducing it...

Senator Walker: But I think that you, in the back room, had a lot to do with educating Benson on this, is that not correct?

Mr. Brown: I do the staff work; he educates me.

Senator Walker: Have not you and he been amazed at the outrage across the country and

the complaints, and are you not considering withdrawing the bill until the fall, when you can have a composite taxation bill?

Mr. Brown: No, sir.

The Chairman: Senator Walker, I do not want to interrupt, but the feeling I have is that the direct and clear question you put jumps right into the middle of policy. I think questions on policy should be directed to the Minister; and we are going to invite the Minister here at some stage. I do not think it is fair to ask a representative from his department such questions. I think the Minister should defend the policy of the Government in this regard.

Senator Walker: He will be here, will he?

The Chairman: We are going to invite him to attend.

Senator Phillips (Rigaud): Mr. Brown, have you any departmental estimates as to the amount of gift tax loss in respect of any particular recent years that would be involved resulting from the exemption of gifts between consorts?

The reason I put that question to you—so as to get the feel of my question—is this, that the Department of Finance in its news releases has placed considerable emphasis on the fact the exemptions between spouses involve the necessity of a drastic—and that is my word—escalation in the gift tax rates; and the line of thinking, in terms of the press releases, was related to exemptions rather than to correlation between the gift tax aspects of the bill and the estate tax aspects.

Having regard to this drastic escalation of rates, my question repeated is: Have you any departmental material to guide us in respect of computations of gift tax that have been paid resulting from gifts between husband and wife, say, in the last three years, so we can relate that to the loss of revenue resulting from the exemption provided by this bill?

Mr. Brown: Senator, there may have been a misleading cast to the press releases.

Senator Phillips (Rigaud): I am glad to hear that. This is the first time we have got that explanation.

Mr. Brown: In as much as I have something to do with press releases, I should blush, if they have been misleading. However, the rationale for the increase in rates of gift tax was not directed to the exemption of inter vivos gifts between husband and wife.

Senator Phillips (Rigaud): You will agree the release said otherwise, and that the debates in the Senate having regard to the utter confidence we had in releases from your department were based upon that assurance and explanation.

Mr. Brown: Well, sir, I have not the releases in front of me...

Senator Phillips (Rigaud): I have them here and...

Mr. Brown: ...but I rather thought they were hinged more in terms of a combination of the two rather than in isolation on the gift tax.

Senator Phillips (Rigaud): We will save the time of the committee if I put the question: Is there a part of the material that would be helpful to us in terms of what were the taxes received by the Crown resulting from gifts between spouses, say, in the last three fiscal years?

Mr. Brown: No, sir.

Senator Phillips (Rigaud): Therefore, we are not in a position to determine what was the loss resulting from the exemption from gift tax?

Mr. Brown: If we lost all of the gift tax, senator, it could not amount to more than \$7 million. \$7 million is the order of magnitude of the total gift tax.

Senator Thorvaldson: Is that year by year?

Mr. Brown: Yes.

Senator Thorvaldson: \$7 million?

Mr. Brown: Something of that order.

The Chairman: To underscore what you said, senator, the minister, when he was speaking on second reading of the bill, put the whole emphasis on the escalation of rates and the need for it in relation to estate tax, and he did not bring into that statement a reference to gift tax, which rather lends point to the view expressed by Mr. Brown when I asked him a question as to whether the integration of gift tax rates with estate tax rates would have proceeded in any event because there were purposes, as a matter of policy, for doing that, quite apart from the matter of the extra revenue that might come from the gift tax. The idea rather was to force or induce some lessening in gifts during the lifetime so as to leave more to be subject to

estate tax. At page 5180 of the *Debates of the House of Commons*, the minister is reported as saying:

I think I made this clear previously both in the house and outside the house.

This is with reference to a question he was asked as to the objective in increasing the estate tax rates. He said:

The change in estate tax is designed to raise exactly the same amount of money that was raised before. There is a change in the burden of estate tax but the revenue will be exactly the same.

Senator Phillips (Rigaud): May I supplement that by reading into the record—I know that this is a money bill and that in respect to it we are probably crying in the wilderness, but I am one of the children of Israel who have been crying in the wilderness for a long time.

The Chairman: It is supposed to be good for the soul.

Senator Phillips (Rigaud): On January 30, 1969 the Department of Finance issued a news release, on page 1 of which appears the following:

The budget proposed to exempt from tax outright gifts and bequests from husband to wife and wife to husband. It also proposed to increase the estate tax exemptions for young children and to provide exemptions for older children. To offset revenue losses from these broader exemptions, the estate and gift tax rates were to be increased.

Mr. Brown: That is misleading, sir; I am sorry. In the sense that it is not complete it is misleading, and I apologize.

The Chairman: It is misleading to the extent, do we conclude, that the reference to the role of the increase in gift tax rates is not properly stated?

Mr. Brown: It is not fully stated and, therefore, it is misleading.

The Chairman: Do you mean that it is misleading in that it says that the chief purpose of the increase in gift tax rates is to make up the loss of revenue on estate taxes? Is that where it is misleading, in that it does not make that statement clear?

Mr. Brown: Yes. If the Government had not been doing anything else at the time but

linking gift and estate taxes there would have been substantial increases in gift tax rates. If that decision had been implemented by itself there would have been an increase in gift tax rates. If on top of that you increase significantly the exemptions in the estate tax act and decide to keep the same general order of revenue, then it is necessary to increase the estate tax rates, and that carries with it a further increase in the gift tax rates. This last reservation was not in the press release.

Senator Phillips (Rigaud): To follow up that line of reasoning, with the consent of the chairman, am I right in assuming that the escalation in gift tax rates from 28 per cent to 75 per cent, and the ceiling on the higher rates starting at \$200,000 rather than \$1.5 million on the old rates, are specifically related to the intention to correlate or synthesize gift tax rates with estate tax rates?

Mr. Brown: Yes.

Senator Phillips (Rigaud): And you feel that the rates fixed do bring about that correlation and synthesis?

Mr. Brown: Yes, sir.

Senator Phillips (Rigaud): I am putting the question so that we will get it into the record. I do not want to take up the time of this committee unduly, but having laid the foundation for it I would like now to put a specific question to the witness. On November 18, 1968 the Canadian Institute of Chartered Accountants submitted a rather lengthy letter to the Minister of Finance. It is hardly a formal brief but, in any event, it contains a series of representations. My first question is: Are you aware of the fact that the Canadian Institute of Chartered Accountants wrote such a letter to the minister?

Mr. Brown: Yes, sir.

Senator Phillips (Rigaud): And I assume that being aware of that fact you are also aware of the contents of the letter.

Mr. Brown: I was when I first saw it.

Senator Phillips (Rigaud): To refresh your memory, therefore, I would like to read from page 4 of this letter where the Institute is dealing with "Gift Tax—Resolution Number 2". In paragraph 3 of the subject matter under the heading "Gift Tax—Resolution Number 2" is the following considered opinion of the Canadian Institute of Chartered Accountants—and I would like to read this

into the record, Mr. Chairman, with your permission.

The Chairman: Yes. I was going to suggest that in addition to that, senator, the complete letter might be appended to today's *Hansard* report of our proceedings. Is that agreed?

Hon. Senators: Agreed.

(For text of letter see Appendix "A")

Senator Phillips (Rigaud): I would merely read this paragraph:

Of perhaps greater concern is the lack of equity between spouses domiciled in Quebec and other parts of the country. The Quebec Civil Code precludes *inter-vivos* gifts between spouses which are not specifically covered by their marriage contract, thus effectively denying to them the facility available to spouses domiciled elsewhere.

And on the following page:

With the quasi-integration of the gift tax and estate tax, is there any conflict with the Federal-Provincial tax sharing arrangements since the provinces do share in the estate tax revenues but do not share in the gift tax revenues?

And just preceding that:

Since *inter-vivos* gifts between spouses are now exempt from gift tax, is it anticipated that the donor-spouse will remain liable for tax on the income earned on such donated property under section 21 of the Income Tax Act? If the donor-spouse is no longer to be liable for tax with respect to such income, doesn't this conflict with the situation in Quebec where the gift will not be recognized for Quebec income tax purposes in accordance with the provisions of the Quebec Civil Code?

Now, Mr. Brown, I do not think you are a practising lawyer in Quebec—quite obviously you are not—and certainly it would be most unfair if I crossed swords with you on any provision of the Civil Code.

Mr. Brown: I am relieved.

Senator Phillips (Rigaud): A fair question, I think, is this: Was the position of residents in the Province of Quebec in relation to the prohibitions covered by Article 1265 considered by the department, and, if so, is it the subject matter of office memoranda, and, if so, is it in order to ask you to file the same?

Mr. Brown: Sir, it was considered. That is the answer to your first question. Secondly, I am not sure that I have a particular piece of paper which would summarize that consideration. This type of discussion or study, if you will, takes place at meetings between officials and ministers, and in subsequent meetings between officials, and a great deal of it is verbal. It is not written down. With respect to the third part of your question, I do not know about the particular situations and traditions as to filing memos between ministers and officials.

The Chairman: If there is any call for the production of an interdepartmental memorandum we should have to give serious consideration to what procedures, if any, are available.

Senator Phillips (Rigaud): That is why I put the question whether it exists.

Mr. Brown: Would you like me to mention some of the considerations that came into this discussion?

The Chairman: Yes.

Mr. Brown: First and foremost, I think we recognized that there is this prohibition, which was the essential question you asked, and from that what flows. If there are no gifts there are no taxes levied. Consequently, there cannot be any adverse tax, if you will, as a result of the prohibition in the Civil Code. The second consideration in these deliberations was that the Civil Code prohibits gifts between spouses during the lifetime, but there is no prohibition of transfer of property from husband to wife on death. The system contained in Bill C-165 also provides a complete exemption on the transfer of property on death, so that while Quebec law may prohibit a transfer of property as early as Quebec residents might otherwise wish, nevertheless federal law still facilitates a tax-free transfer of that property, perhaps later rather than earlier.

Senator Phillips (Rigaud): What is the good of a free transfer allowed by federal law if it is known that under the B.N.A. Act we cannot do so? Surely that is a specious argument, sir.

Mr. Brown: Let me put it this way. A federal tax law cannot override the Quebec Civil Code.

Senator Phillips (Rigaud): Exactly.

Mr. Brown: The federal tax law does not levy a tax on Quebec residents who make gifts from husband to wife, whether those gifts are outside the Quebec Civil Code or carrying out a marriage contract. My first point was therefore to say that there is no tax on transfers between husband and wife. If the property remains to be transferred at death rather than being transferred during life, there still is no tax.

Senator Phillips (Rigaud): Residents of Canada in Quebec cannot make a gift between husband and wife and in respect of gifts given now to outsiders, not between husband and wife in Quebec, the entire Province of Quebec is now subjected to a maximum rate of 75 per cent instead of 25 per cent. You have increased the highest amount. The situation to which Quebecers are now being subjected is that they are in exactly the same position as before in respect of prohibition of gifts between husband and wife, where any exemption is of no use to us as provided by present legislation. Surely as a matter of equity in relation to the application of a federal statute the older rate should apply in so far as gifts to outsiders are concerned—that is to say, to non-spouses—until such time as the repeal of article 1265 puts residents of Quebec in the same position as their fellow citizens across the country.

Mr. Brown: There is clearly an aspect of the gift between spouses that relates to gifts from either or both to third parties.

Senator Phillips (Rigaud): To third parties?

Mr. Brown: To third parties. In other words, in Ontario a husband can give \$2,000 to a child.

Senator Phillips (Rigaud): Let us stick to Quebec.

Mr. Brown: I was proposing to make a point concerning Quebec, if you will permit me. In Ontario a husband can give \$2,000 to a child. He can also give his wife \$2,000 and if the wife chooses she can give \$2,000 to the child. In an Irish manner of speaking, the husband has given \$4,000 to the child. In Quebec, we have to consider two types of marriages, those which are in community of property and those where there are marriage contracts. Where there is community of property, the assessing practice of the department, which is based on an appeal board case, is that gifts made out of community of property are deemed to have been made by

each partner in proportion to their interest in the community. . .

Senator Phillips (Rigaud): You are only allowed to do that because you lost a case in the courts. You did not take that position freely.

The Chairman: Senator, however they came to it, that is the position.

Senator Phillips (Rigaud): Does not the department take the position that the income of the community is the income of the husband, even though the communal income includes income belonging to the wife? You went to the Supreme Court on that in order to be able to get the higher rate of taxation resulting from the income from communal property, even though part of it was the wife's property.

The Chairman: Are not we getting a little into a collateral issue?

Senator Leonard: I should like to ask something following Senator Phillips' last question. This is probably to clear my own ignorance. It seems that the nub of the point, as I gather it, is that there is a trade between the exemption given for spouses and an increase in rates, and to me Senator Phillips' point seems to be that because there could not have been any granting of an exemption to the spouse in Quebec because there was no right to make it, there should not be the trade as to an increase in rate with citizens who are residents of Quebec. This is how it comes to my mind.

Senator Phillips (Rigaud): That is it exactly.

Senator Leonard: Can you clear my ignorance?

Mr. Brown: I cannot accept your last word but I will try to answer the question. At the beginning of our discussion I tried to make the point that the change in gift tax rates related not to the exemptions in the gift tax but to linking it with estate tax.

Senator Leonard: I appreciate that.

Mr. Brown: Inasmuch as the estate tax is levied in all provinces and there are no prohibitions in the Civil Code with respect to leaving property on your death to your wife, then I think this follows. May I interject one point, which is perhaps irrelevant and you might rule me out of order, Mr. Chairman.

For years people in community of property in the Province of Quebec have had an advantage under the estate tax in that half of the communal property is not subject to the estate tax, even though all the property may have resulted from the labours of the husband, or perhaps in some cases the labours of the wife, whereas in all other provinces that property would be subject to that tax. There may now be a disparity for people in Quebec on marriage contracts. The disability is that the marriage gift in the marriage contract may be restrictive in regard to their ability to permit their wife to make this \$2,000 gift. There may be a disability there in some cases.

Senator Phillips (Rigaud): Because of the nature of this bill being a so-called money bill, I for one wish to press the department to consider objectively the desirability—because I do not think it constitutes a retreat on the part of the department—of reverting to the old rates of gift tax so far as Quebec is concerned pending the repeal of article 1265, or any other legislation in Quebec which in effect involves the repeal of the provisions of article 1265. I do not think that is discriminatory legislation in favour of the residents of Quebec. I appreciate that this is a money bill and it is difficult to deal with amendments and that sort of thing which may have ramifications that I may not want to invite. I am therefore pressing the department to consider this question on its merits all over again, even though it may have to go back to the other place if you support an amendment in this committee.

The Chairman: What you are saying is that since you get the burden of increased rates you have no opportunity to enjoy the benefits.

Senator Phillips (Rigaud): Exactly.

Senator Leonard: As I understood Mr. Brown to reply to me, he says they get the benefit on death.

Mr. Brown: Yes, sir.

Senator Leonard: And in so far as they do not get the benefit in their lifetime, that increase in the rates of gift tax therefore has no application in effect, because there is not the power to make the gifts. Therefore, the increase in gift taxes does not affect it.

Senator Phillips (Rigaud): Mr. Brown, would there not be a non-sequitur in your reasoning, if the donee spouse disposed of the

subject matter of the gift during the lifetime of the donee but after the death of the donor? You are assuming that the subject matter of the gift remains intact, more or less. And I ask that leaving aside the question that you may be introducing incentives for fortune hunters to get after anxious widows. I am not going to go into that, because that is a social question. But I personally believe that you have introduced that factor. This is a veritable hunting ground for fortune hunters to get after tired widows, if we allow complete exemptions on estate taxes for widows. But leaving that aside, because that is in the realm of ethics and social thinking, I put the direct question that once you give the spouse ownership of the asset, whether by gift or by exemption under the estate tax, you have no assurance of the correlation of your rates under the gift tax and under the estate tax because the entire subject matter of the gift or the entire subject matter of the legacy may be disposed of by the donee or legatee, as the case may be.

The Chairman: If it is an outright gift, yes.

Senator Phillips (Rigaud): Yes, if it is an outright gift. You are working on assumptions that do not flow; there is not the necessary sequitur between the exemptions and the ultimate computation of tax liability because the entire asset may disappear.

When you talk about integration of gift taxes with estate taxes, by the time you get to the date of the gift and the date of the death, you may have the party leaving the province...

The Chairman: Or leaving the country.

Senator Phillips (Rigaud): ... and you may have dissipation of the asset in whole or in part. Do you see? And, after all, we are not to blame if we read the departmental releases the way we did, but, dealing with the subject matter the way it is in terms of integration, synthesis and so on, it does not follow, for the reasons I have mentioned.

The Chairman: Senator, we have presented the viewpoint pretty clearly to Mr. Brown. Any decision on it will, of course, have to come at a level above him. Since we propose to invite the Minister to come here, I would expect that Mr. Brown would indicate to the Minister the viewpoint and what has been said here today so that the Minister will be ready to deal with this question.

Senator Phillips (Rigaud): Thank you.

Mr. Brown: I will do that, sir.

Senator Molson: Mr. Chairman, I think we see a social purpose in this legislation, and there has been a great deal of discussion on the financial implications of it. I would like to ask Mr. Brown if any study or research was done on the economic effects flowing from these changes.

Mr. Brown: As you know, senator, the effect of taxes on motivation is a very difficult subject. We had reference to a wealth of studies that have been published over time on this, but none of them are very conclusive. The usual position, I think, of a reader of these is to remain convinced of his predilections after he has read any of the studies. It is almost a matter of assertion rather than one of conclusive proof.

The Chairman: Will you, senator, illustrate your point on the social aspect?

Senator Molson: I am speaking of the thought that was expressed that this would be a fairer treatment between members of society in disposing of their wealth by the two different systems, one by legacy on death and the other by gift during the lifetime. It has also been suggested that this would make a fairer distribution. That is the social aspect. Economically, I am wondering whether there was any study or any examination of what would have been the effect over the last few years had these gifts, for example, been under the new legislation, and so on. Certainly, if these gifts have had any effect on the economy at all, it has been that there has been certainly a greater amount of money divided up and put in the hands of more people, and more should have been spent and so on than if it had remained in larger masses and blocks. There is this possibility and suggestion. I am wondering if the economic aspect of this was looked at or whether it was examined from the social and financial aspect only. That was my question.

Mr. Brown: Senator, the aim of the rates and the structure, ultimately, was to produce about the same revenue. This means, then, that there is the same withdrawal of the ability to consume or the ability to save. It may come from different people, but there is the same withdrawal. The next stage in analyses would be to try to decide whether the people who now will inherit with less estate tax have a greater propensity to save or a propensity to save in different channels and with

different effect than the people who will inherit less after estate tax.

The Chairman: Had you thought of the incidence, for instance, in a gift? If you retain the money on the one hand it is likely to remain there and earn money annually so that you have got a recurring amount that comes into the economy; if you make a gift of it, knowing a great many human characteristics, it is likely to be spent. So on that aspect, senator, I do not know whether the economics would work for you or against you.

Senator Molson: I asked if a study had been made. That is all. Whether it had been examined. I think the answer is probably no, Mr. Chairman.

Senator Leonard: There is nothing conclusive.

Mr. Brown: On the examination we made we felt we could not come to a conclusion. That is perhaps a more direct answer.

Senator Molson: Was any thought given to the impact on people who tend to settle in this country? Were all the factors involved looked at? And was any thought given to the impact on people who tend to leave this country, and did you look at all the factors involved there?

Mr. Brown: Yes, that was thought of.

Senator Leonard: What kind of conclusions did you reach there?

The Chairman: That it still will happen.

Mr. Brown: That it still will happen, yes.

Senator Burchill: Mr. Chairman, following Senator Molson's question about the economic effect, I want to ask Mr. Brown if the officials of the department gave any study to the effect that these escalating rates will have on small businesses. I am thinking of family businesses in particular. I want to say to Mr. Brown that I have just returned from New Brunswick where I spent the Easter recess and I had delegation after delegation come to me pointing out what very serious effects these high rates are going to have on these small concerns. I am not going to take up the time of the committee in doing so, but I could tell you of case after case. Moreover, I found the same thing held true in different sections of New Brunswick. It was not only with respect to where I live or in my own small community, but also was in the larger cen-

tres, where I had the same reaction, and I think it is going to have a very serious effect. I am thinking particularly of manufacturing concerns who are very much concerned with employment and labour. I think it is a very serious matter, and I am very much concerned about it.

Mr. Brown: We did study the possible effects, senator. I think in this area the first thing one has to do is define one's terms. "Small" is a very elastic word, and I would be very interested to know from what point you would like me to discuss it. Is "small" \$150,000, \$250,000; is it half a million dollars, \$1 million, \$10 million?

Senator Burchill: Up to \$400,000.

Mr. Brown: Well, less than 1 per cent of Canadians have estates over \$250,000. If we were talking in terms of small incomes, to put it in some sort of context, we would be up over an annual income of \$50,000 or \$60,000 a year to get to roughly the same proportion as estates of \$400,000.

I think clearly the effect of the rates is that in families, let me say, with three children, if I remember correctly, the rates are lower—the effect of the rates is to produce a lower tax up to \$150,000, and if there are four children it is up to \$200,000. If there are two children, the rates are somewhat higher almost from the beginning. So, these are the effects. If I can digress into policy, perhaps the main import of the announcements of October 22, 1968, was that there was going to continue to be death duties in this country, because I think the degree of change in the area in which one speaks of "small" estates—and this is an elastic term—is not very great, but there has been, of course, a greatly increased public awareness of the existence of what was there before.

Senator Leonard: What is the line at which the rates are lower? What is the maximum amount, taking your case of three children?

Mr. Brown: In the case of three adult children, each of whom we have to assume inherit at least \$10,000, the total estate tax will be lower unless the estate exceeds \$160,000.

The Chairman: But when you are talking about the so-called "small" estates, in order that you may have an exemption for a child at 26, it is \$10,000 of an exemption—the testator has to make the gift in his will, and he may not have the wherewithal to do it.

Senator Leonard: If he has \$160,000, he has.

The Chairman: It is a question of available money.

Senator Leonard: Liquidity?

The Chairman: Yes.

Senator Leonard: Oh, that is another question.

Senator Connolly (Ottawa West): There are problems of liquidity.

Senator Leonard: That arises in all kinds of estates, and it comes into your valuation to start with. Presumably, your valuation is on the basis of reasonable liquidity.

The Chairman: I suppose any small estate could be wholly left to the wife with a simple and small contribution by way of gift to the family that his liquidity would permit. I think the wife would have to make certain dispositions.

Senator Leonard: But the essence of the answer is that up to \$160,000 there is no increase in duty, in the tax, under this new bill from what there was before, taking the case of a person with three children, and I think it is just as well to clear the air, because there has been some broadcasting of suggestions it represents quite a substantial increase in tax.

The Chairman: I am not satisfied that if you made the calculations on this exact basis you would come out with those answers in these cases, because you have different types of exemption before you arrive at the taxable value of the estate under the old law and under the new law.

Mr. Brown: The basis of my remarks is an attempt at those computations.

The Chairman: If you have such a calculation making the comparison, would you be prepared to file it here?

Senator Croll: They are filed in the records of the House of Commons.

The Chairman: But we should have them too, Senator. You are the one who wanted the "one-two-three" on the *Hansard* report, because everybody reads it.

Senator Croll: I saw the calculations on the record of the House of Commons, and I realize that what he said appeared there. I took a

careful look at where it would hit most of you people.

Senator Leonard: Let us take, say, an estate of \$500,000 as the upper bracket. Assuming the husband has an estate of \$500,000, and the wife has nothing, and in their lifetime they make a division and their deaths are at approximately the same time and the ultimate beneficiaries are approximately the same people, at what line or level would there be a tax increase under the new bill compared with formerly? In other words, what is the effect on the ability to give a free gift of 50 per cent of the estate?

Mr. Brown: I think these figures were made available in the House of Commons, which indicate something of this order, on an estate of \$500,000—this is rather complicated, I am afraid—

Senator Leonard: Well, take a figure that is not too complicated.

Mr. Brown: It is the situation that is complicated, and not the figure.

Senator Leonard: Oh, all right.

Mr. Brown: Perhaps at the moment one might say that the typical—if there is one—estate planning will leave the estate in trust with income to the widow and the capital divided among the children on her death. That is popular because it meets social values and also because it happens to produce the lowest estate tax.

If I may rephrase it a little to suit the basis I have here, on \$500,000 at the present time, whether there were one, two, three or four children, the estate tax would be \$116,000.

Senator Leonard: Before this bill?

Mr. Brown: Yes, before this bill.

Senator Connolly (Ottawa West): You say "before this bill"—the old tax; but that would apply in what case, the case of the estate going to the widow, and then on to the children?

Mr. Brown: The estate is left in trust to the widow, with income to the widow during her lifetime, and the capital to her children on her death.

Senator Connolly (Ottawa West): That is all I wanted to know.

Mr. Brown: It is in the context of an estate in one of the provinces that does not levy

succession duties but that take our money instead. If we contemplated the situation you suggested, a man with \$500,000 who leaves \$250,000 to his widow, and gives the rest to his children, and on her death she divides the \$250,000, assuming it is still there, equally among the children—if there is one child involved the tax becomes \$125,000, which is an increase of \$9,000 on the base of \$116,000; if two children, \$117,000, an increase of \$1,000 on the base of \$116,000; if three children, \$109,000—a reduction; and if four children, \$101,000—again a reduction. I should not prophesy, but that may well turn out to be the estate planning will of the future.

Senator Leonard: That is for four children?

Mr. Brown: Yes, that is for four children.

Senator Molson: It is a little late to bring that up now!

Senator Thorvaldson: I would like to ask some questions as to the calculations that have been made by the department in regard to the balance of ways and means...

Mr. Brown: Yes, sir.

Senator Thorvaldson: ...created by this bill. There was some reference to this matter earlier. I think the first thing that I would like to refer to is the statement, which I believe you made, that the loss in tax occasioned by the free gifting between spouses was merely equivalent to the gain in tax under the gift tax; is that correct?

Mr. Brown: No, sir.

Senator Thorvaldson: Or, there was a difference of \$7 million.

Mr. Brown: No, the remark I made was that if we did not collect a cent in gift tax because all taxable gifts previously had been from husband to wife or from wife to husband, the maximum loss would be \$7 million, because that is the maximum revenue the federal Government receives from the gift tax.

Senator Croll: In any one year.

Mr. Brown: Yes, in any one year; that is right, senator. I did not make myself clear.

Senator Thorvaldson: So, you say there is a difference of \$7 million?

Mr. Brown: No, sir. I was not saying we would lose \$7 million. I was just trying to get the order of magnitude in answer to Senator

Phillip's (Rigaud) question as to what the possible loss could be. The revenue picture in respect of this bill has been looked at in aggregate, and the major attention has been on the estate tax. The portion of the revenue that comes from the gift tax is very small. It is not thought that the major change will come there. It is thought that the major change will come, if you will, at the estate tax end.

The Chairman: Senator, right on that question, you are asking: Do you think the application of the new gift tax rates will reduce that historic revenue from gift taxes below \$7 million?

Mr. Brown: I think in the short term the answer is likely to be yes, senator. People take time to become accustomed to these changes, and it will take time for people to tailor their gifting to the new rates.

The Chairman: I remember a remark some time ago that provoked a lot of debate. It was: "What's a million?". You are now talking about \$7 million as being a very small amount.

Mr. Brown: No, I spoke in relative terms.

The Chairman: It did not enter into your calculations.

Mr. Brown: Yes, it did enter into our calculations.

Senator Thorvaldson: A while ago, Mr. Brown, I thought I heard you use the words "the same withdrawal". Did you mean by that that there would be the same withdrawal of tax revenue from the public under this bill as under former legislation?

Mr. Brown: The order of magnitude.

Senator Thorvaldson: That is what I mean.

Mr. Brown: You cannot possibly prophesy the precise amounts.

Senator Thorvaldson: So whether we live under the former legislation completely or under this, there is really no difference in the balance of ways and means in so far as the Government is concerned. Is that correct?

Mr. Brown: The aim was not to produce a significant difference. There will be a difference. There will be a difference arising, first of all, from the impossibility of precision, and there will be a difference arising, secondly, from the changes made in the legislation to

restore the \$50,000 starting point to provide for the payment in instalments and—I should remember it, but I have forgotten the third change that was made and announced.

The Chairman: I think the witness should remember the quotation I read from Mr. Benson. He said the changes were designed to produce exactly—this was the word he used, “exactly”—the amount. Have you any comment on that?

Mr. Brown: Well, a word is a word is a word.

The Chairman: And a buck is a buck is a buck.

Mr. Brown: Yes.

Senator Thorvaldson: My point is that Senator Phillips (Rigaud) has frequently referred to this as a money bill. My position is, and always has been, that the issue as to whether the Senate has the power to deal with such a bill, to amend it or defeat it, is not a question of whether money is involved but a question of whether the balance of ways and means are affected. I think we will find that that is the position the Senate has taken, and I think these questions are important from that point of view.

So, we can take it definitely that so far as the calculations made by the department are concerned, they indicate that there is an infinitesimal difference—if I might use that expression—and it might be either way? In other words, there might be slightly less revenue or slightly more revenue resulting from this bill?

Mr. Brown: I would use the words “not significant”, senator.

Senator Thorvaldson: Then, I would like to ask this question: What is the total amount now received by the exchequer from the estate and gift tax laws?

The Chairman: We have had the amount for the gift tax inter-vivos. That is \$7 million. You now want the estate tax?

Senator Thorvaldson: Yes, after repayment to the provinces of the 75 per cent in the case of those provinces that have that agreement.

Mr. Brown: We calculated the estate tax at roughly \$50 million, and the gift tax at \$7 million.

The Chairman: Yes, it is 25 per cent. The provinces get 75 per cent, including abatements.

Senator Leonard: What are the latest figures on that? Of the total amount received under the federal taxing statute, how much is rebated to the provinces?

Mr. Brown: Sir, it is a relatively complicated situation in that in our act we have a schedule of rates, and we do not collect those rates in British Columbia; we do not collect those rates in Ontario; and we do not collect those rates in Quebec. In the provinces in which we do collect those rates we send 75 cents of every dollar back.

The Chairman: Senator, I think your question was: What amount of revenue would you receive as a result of the assumption that there were no statement of the estate tax?

Mr. Brown: We are speaking of just over \$200 million.

Senator Carter: Could I ask if there is an assessment made of the cost of collecting that?

Mr. Brown: Not to the precise dollar. I would ask Mr. Linton if he would like to express a view as to the total cost of the administration of the estate and gift tax legislation.

Mr. W. I. Linton, Chief, Income Tax Division, Department of National Revenue: Mr. Chairman, we made some estimates quite a long time ago, but I would think they still have some relevance. In 1959-60 the cost of administering the succession duty and estate tax part of the administration, excluding the gift tax, was about four per cent of the total costs of the department.

Mr. Brown: And that would be—what?

Mr. Linton: At that time it was about \$1.5 million—\$1,400,000, I think. In 1966-67, if the four per cent was still valid, the costs would be about \$2 million.

Senator Leonard: So, four per cent would amount to how much?

Mr. Brown: \$2 million on the basis of 1966-67.

Senator Leonard: It went from \$60,000 to \$2 million in ten years?

Mr. Linton: No, there is no \$60,000. In the year 1959-60 the estimated total costs were \$1,400,000.

Mr. Brown: That is for the estate tax alone?

Mr. Linton: Yes, and using the same percentage for 1966-67 would bring it up to \$2 million. There would be a little more in relation to the gift tax, but very little. The costs of that are really not very much.

Senator Walker: Would you turn your attention to the economic problem? Across Canada there are small businesses in villages, little towns and cities that may be worth perhaps \$1 million tied up in fixed assets, which employ a great many people. I presume you have taken that into consideration. On that \$1 million going from the owner of the business to his children, what would be the estate tax, keeping in mind the 50 per cent starts at \$300,000.

Mr. Brown: There is a considerable difference, depending upon how many children there are, whether there is a wife and how the man leaves it.

Senator Walker: We have got past his wife now; the whole thing falls in and there is a tax on a \$1 million estate going to two or three children.

Mr. Brown: In the order of \$425,000.

Senator Walker: How in the name of heaven can the new owners of the business, the children, possibly raise \$425,000 to pay that tax?

Senator White: They just can't.

Senator Molson: Sell.

Senator Walker: There is no answer to that is there? It is impossible

Mr. Brown: Until one looks at the facts of the case there is no answer.

Senator Walker: If it is impossible, is it not evident that before he dies the father, not being able to gift it because of the 75 per cent tax on everything above \$200,000, will seek out an American and sell it, and having done that ship off to Nassau and not pay any tax? Are you not defeating your own ends by raising taxation and making the estate tax so heavy on people who have substantial estates and are contributing so much to our economy by keeping these family businesses in operation? Are you not defeating your own ends?

Senator Leonard: Is this not a question of policy which the minister will take care of in due course?

The Chairman: I think the witness can answer factually what the effect will be of a set of facts which is put forward. Having regard to those facts we can each draw our own conclusions. However, in the area in which this was formulated it became policy, and I do not think we can ask the witness to comment one way or the other on the policy. That is the view I have consistently held here, and so far the committee has supported me.

Senator Walker: I appreciate that this is in the area of policy. Having this in mind, and the impossible conditions that result from the incidence of this high taxation all across Canada, how does it become a matter of policy to destroy our capitalist system, leading to socialism, in the way they have done across Europe?

The Chairman: It is open to any conclusion that you or any other member of the committee may draw.

Senator Leonard: Could we hear from the witness what would be the tax on a \$1 million estate under the present act?

Mr. Brown: In the circumstances posed it is in the order of \$300,000.

Senator Thorvaldson: I think Senator Walker's point was that under this new system the relationship between \$425,000 and \$300,000 is completely destroyed, because under the old system there would not have been an estate of \$1 million since most of it could have been gifted over a period of years. That is really the main issue involved rather than the disparity between the estate taxes.

Mr. Brown: The gift tax exemptions may in some instances be larger now than they were previously. It depends on the size of the family, and, of course, the size of income. If you postulate a large income and a small family, the gift tax exemptions are lower. The fact that we have had relatively low gift tax collections over the years leads me to hypothesize that there has not been much in the way of taxable gifts made. I think this flows, if you will, from the figure of \$7 million. I think perhaps what you are speaking about, to put it in context, is the relationship between the exemptions that existed and the exemptions that now exist.

Senator Thorvaldson: I quite agree. You are right on that. It is fairly clear why the gift tax was approximately \$7 million. There are two reasons for that. One is a lot of gifting having been done by people with large incomes, and consequently the amounts they can gift without paying tax are high. The other and just as important a reason is that the gift taxes have been comparatively light in this country, for a purpose, which was to enable people to provide for their family during their lifetime, to pass on their business during their lifetime. Our point is that such a thing will become impossible under the present rates of gift tax.

Mr. Brown: It will become more expensive.

Senator Thorvaldson: It becomes so expensive as to be, to my mind, prohibitive.

Senator Beaubien: Can you give us any idea of the estate tax and the gift tax in the three big states below the border—New York, Massachusetts and California?

Mr. Brown: I do not have those figures with me.

Senator Beaubien: Has the department given any consideration to them or studied them in making a decision what the rate should be here?

Senator Thorvaldson: I would suggest to my honourable friend Senator Beaubien that those figures are all contained in the publication *U.S. News and World Report* of about two or three weeks ago.

Senator Beaubien: I think we should compare them. We are part of North America and we are in competition.

Mr. Brown: We did compare the rate structure in Canada and the rate structure in the United States. There is no doubt that the rate structure goes up at a higher rate, a steeper incline if you like, in Canada than in the United States. On the other hand, of course, the American rates go up to 77 per cent. They do not get there very quickly, but they get up to 77 per cent.

Senator Beaubien: Are we talking about estates now?

Mr. Brown: Yes, we are.

The Chairman: Is it correct that the 50 per cent rate in the United States is reached at about \$1,200,000 or \$1,500,000?

Mr. E. R. Smith, Tax Policy Division, Department of Finance: I think it is over \$1,500,000. Actually there is no 50 per cent. It goes from 49 per cent to 53 per cent.

Mr. Brown: We also examined the weight of taxes in these countries. The Americans collect something in the order of 2½ per cent of their revenues through death duties. We collect, and will continue to collect, something of the order of 2 per cent. We are trying to carry a larger government program on a lower per capita income, a lower per capita wealth base. It almost inevitably means that to carry the same program we need a higher rate, and to have a larger program still higher rates.

The Chairman: Maybe the answer is that you should spend what you are able to spend, and spend less.

Mr. Brown: I have much to answer for, but not spending.

Senator Thorvaldson: Would you not agree it is the rate of tax that is important rather than Canada spending a certain proportion of a certain tax vis-à-vis the United States?

Mr. Brown: If the Government expenditures are to run over \$10 billion, the question is not whether to have taxes but what kind of taxes to have. In total they must come close to \$10 billion at least in the long run, if not year by year. There are only so many people to send the bill to and only so many ways of describing the bill. This is why I responded not only in terms of rate but in terms of the over-all weight of the tax and the relative proportions of the tax revenue raised in this manner.

Senator Beaubien (Bedford): We were talking of the tax on half a million dollars. What would it be in the state of New York or in the state of Massachusetts, roughly.

Mr. Brown: The figures that I have here for the United States speak only of the federal rates.

Mr. Linton: There is abatement for estate taxes, and I think you can assume that in most states the federal total rate represents the total payable amount.

Mr. Brown: It is an abatement, not a deduction?

Mr. Linton: It is a deduction, but the states' rates are geared to the federal rate. There are one or two states that are in excess, but by

and large, if you take the federal rate, you include the rate for the state.

Mr. Brown: May I quote a few figures from the half million dollars, then?

Senator Beaubien (Bedford): Yes.

Mr. Brown: We have four situations on the schedule before me. First, there is the estate that goes to the widow and then, on her death, to the adult children. That, of course, produces the highest tax under our existing system. I should say, first, that under the existing system the Canadian tax is \$200,000. Under the proposed system it runs between \$170,000 and \$185,000. I am speaking now of the range of one to four children. In the United States the figure is \$160,000.

If we move to an estate left outright by a widower, where we do not have the double tax and, therefore, the existing system is not nearly so bad, our existing tax is about \$123,000; the new tax will still remain between \$170,000 and \$185,000; and the American tax is about \$126,000. There are some assumptions in the American tax that one should get to. If we talk about a trust estate, the one we spoke of or perhaps the current state planners will, the current tax is \$116,000; the new tax will be between \$170,000 and \$185,000. You will notice that the figure for the new tax of \$170,000 to \$185,000 is common in all of these first three types of devolutions under the new system. The American tax would be about \$71,000.

Senator Beaubien (Bedford): We go from \$71,000 up to \$185,000?

Mr. Brown: Yes. May I speak of the fourth case? If the estate is left half to the widow and half to the children on the widow's death, the old tax is about \$148,000; the new tax will vary from \$100,000 to \$125,000 and the American tax is \$95,000.

Senator Walker: What was your third illustration again?

Mr. Brown: What I might call the present estate planning will, where you leave the income for life to the wife and then the capital, on her death, to the children.

Senator Beaubien (Bedford): That is \$185,000?

Mr. Brown: No, that is now \$116,000. It will be somewhere between \$170,000 and \$185,000, depending upon the number of children.

Senator Cook: Could we return to the case of the businessman leaving a business worth a million dollars? The present rate is \$300,000. The new rate will be approximately \$425,000. What would happen, if he gave half the business to his wife and they both died leaving \$500,000 each?

Mr. Brown: Let me find that, sir. It depends, of course, on the number of children involved, but the new law would produce a tax varying between \$338,000 and \$368,000.

Senator Cook: Therefore, by taking proper precautions, the new tax would be only \$50,000 more than the existing one.

Mr. Brown: The lowest rate he could have achieved under the previous system would be in the order of \$305,000. The new rate, depending on the number of children, would vary between \$338,000 and \$368,000.

Senator Kinley: Mr. Chairman, was there a provision in the law that you could prepay succession duties or estate taxes by settlement with the department, that is, with the Government? You could prepay them and it would be advantageous. If you lived the three years, all right. If you did not, they would give you credit for the money with interest.

Mr. Brown: I think you could, in effect, accomplish that by gifting, but I do not think it applies to legacies.

Senator Kinley: I think it does.

Mr. Brown: I am not aware of any system whereby you could pay the estate tax as such in that way. If you gave the money away before you died, then you paid the gift tax; if you lived three years, there was no estate tax. Perhaps in that sense...

Senator Kinley: The proposition as I understand it is that it would be advantageous to pay the estate tax while you lived and you would get a consideration if you paid something towards it. There was a three-year limit on it. If you died within the three years the estate would get credit with interest for the money you paid in.

Mr. Brown: I suspect that they have devised some way of giving away the estate and simply paying the gift tax, but I presume you found a means whereby the father still controls it. I know of no machinery for prepayment of estate tax as such, at any rate.

Senator Phillips (Rigaud): My old friend, Mr. Linton, may be able to answer this through you, Mr. Brown. In dealing with legacies to wives under wills, my experience has been, in close to 50 years, that very little outright gifting is made to wives, aside from a gesture amount. Income is given to the wives and the capital goes to the ultimate beneficiaries who are usually children. Is there a departmental figure in respect of that? For example, taking 100 wills, how many of those wills provide for outright giving to wives, based upon past experience?

Mr. Brown: Senator, there is a sharp break at about the \$150,000 mark for estates. Up to that that is the normal will. Above that, it becomes a very rare one.

Senator Phillips (Rigaud): That being so, it becoming a very rare case, let us take a look at Table II which the Minister filed. In dealing with the situation where we are now providing for the exemption to the wives, we will take the case under his Table II. First of all, I will deal with \$200,000 and then with \$400,000. The following three conditions are present, according to the Minister in Table II: (1) basic exemption of \$60,000 and no gifts within three years of death; (2) spouses' exemption of 50 per cent of the value of the estate plus \$20,000 for children and no taxable gifts; (3) exemption of \$20,000 for children and the value of the estate capital for the use of wife remains the same.

Now, with these three basic ingredients here is what we find when we make a comparison: the total amount now paid for \$200,000 is \$21,600; the total amount for \$400,000 is \$79,400.

If we go back to Table I, without the spouses' exemptions, for \$200,000 you now have a payment of \$39,700, and for \$400,000 you have \$129,200. It is an involved question, but I do not think the experience of the department in the study of wills, in terms of outright giving to wives, justifies the escalation of rates based upon the spouse exemption.

Mr. Brown: The figures you quoted were not the ones in the tables I have in front of me. They were tables...

Senator Phillips (Rigaud): ... produced by the Minister. The remarks are not the official remarks, but the tables are. (*Document handed to Mr. Brown*).

I am trying to get at a rather involved point but, I think, a very important point. I

am talking to the gift tax exemptions and to the question of the escalation of rate gift-tax-wise and their synthesis with the estate tax rates. They assume a basic benefit resulting from exemptions to the spouse, whereas in practice, based on experience of matters to which you have referred, there is very little outright giving to the wife, and it is common sense when there is a disparity of life expectancy of between four and five years between the male and female spouse that there is very little given to the wife outright because, first of all, the male assumes his wife will outlive him by only four or five years, and the ultimate giving, in terms of capital, is to the beneficiaries who are usually the children. I have been in law practice close on 50 years, and my experience has been that insofar as capital is concerned there is usually a mere complimentary giving to the wife to let her know she has been a dutiful consort, and you then provide income on the capital for her during her lifetime, which usually consists of a limited number of years in excess of her husband's, and on her demise the capital is then handed over to her children or others. In light of my own experience of some 50 years, I would say there is not one in a hundred wills which provides for major giving of capital to the wife. In light of that experience of my own, and of the life expectancy of the wife not being more than four or five years more than her husband, we have this tremendous escalation of the gift tax rate in relation to the estate tax rate, based on the spouse exemption, when it is not a realistic consideration in terms of present and past practice. I may say it looks like a case of the mountain trembling and a mouse coming forth.

The Chairman: It is a pretty big mouse.

Senator Phillips (Rigaud): As I said in the debate, the mountain trembled and there was a lot of shaking in small businesses in the process and the foundations were destroyed. However, I am dealing with this practice of giving, and the commonsense relationship of giving between husband and wife does not justify this approach to the problem, in terms of rate gift-tax-wise or estate-tax-wise.

Mr. Brown: I obviously cannot get into the subject of trade-offs. But, as I said earlier, our examination of estates left us with quite a cleavage in what is left to the wife at about \$150,000. Up to that point wives tend to get outright bequests. Beyond that point—and I cannot speak of the unanimous practice—wives tend to get life interest in a trust.

When estates get very large there also tend to be outright gifts to the children at the time of the father's death. The tendency begins then, in our study—and you can find reference to this in the published study of the Ontario Taxation Committee, the Smith Committee, who published on the devolution of estates in Ontario—there begins to be a practice of leaving some property at that time outright to children; in other words, not tying up all the capital.

Under the proposal, if it is an estate whereby the income for life is to the wife and property to the children on her death, that amount is exempt at the time of the husband's death; and I suggest that is not in any way an illusory exemption at that time. It falls in at her death, and that is likely what you are referring to. If there is a substantial amount given to the children at the time of the husband's death, you do find yourself in Category 4 of the tables whereby the husband has taken advantage of the exemptions and low rates—the lower rates—the less high rates, if you will—in the schedule on his death, and the amount exempt in the wife's hands, is taxed when she dies and also gets the advantage of the less high rates.

Senator Beaubien: That is \$10,000 to each child?

Mr. Brown: Yes, and perhaps more, if there is a taxable estate on the husband's death. After all, there are brackets below 50 per cent.

Senator Beaubien: He can give \$10,000 to each for nothing?

Mr. Brown: He can give \$10,000 to each for nothing and an aggregate amount beyond that which yields rates below 50 per cent. It is on the assumption that that sort of thing has happened that this fourth category was placed in these tables.

In response to Senator Phillips (Rigaud), I am saying it seems to be a trend for outright transfer to the children as estates get larger. I agree with the senator that what the wife gets is by virtue of an income amount under a trust.

The Chairman: Mr. Brown, you were indicating the table of rates you had in these examples differed from the table of rates Senator Phillips (Rigaud) produced. Have you any comment there?

Mr. Brown: It is a little hard at the moment to see what the particular circum-

stances are, but it seems to me, on short examination, that they are discussing a situation in which there is an estate set up with the wife having income for her life and the capital being divided between two children on her death.

In these tables I have before me—and we will be pleased to produce them—they talk of the old estate tax being \$6,200 on \$100,000. That ties in.

I misunderstood you, Senator Phillips (Rigaud). You spoke of \$21,600 on \$200,000, but the figure for the old estate tax was \$28,600. The new one was \$21,600. These seem to have been worked out by Mr. Huggett, a chartered accountant in Montreal. I am not saying they are in any way wrong, but I did not find them in my table, and that may be because he has chosen other examples.

The Chairman: Since they have been discussed here and it would be easier to follow them intelligently, perhaps we should attach the table Senator Phillips (Rigaud) produced and also the tables you referred to, Mr. Brown, as appendices to our record of proceedings of today.

Hon. Senators: Agreed.

For tables see Appendices "B" and "C".

Senator Croll: Mr. Brown, you told us the estate tax runs in the area of \$7 million.

Mr. Brown: The gift tax.

Senator Croll: The gift tax runs in the area of \$7 million?

Mr. Brown: Yes.

Senator Croll: Can you explain this general furor about gift tax? Was one of the reasons you dealt with it the way you did perhaps the view that no one was taking advantage of the possibilities of gift tax?

The Chairman: No, it could not be that. There were a lot of people taking advantage...

Senator Croll: \$7 million does not sound like an awful lot...

The Chairman: But the exemptions were higher.

Senator Croll: What is the relationship in other parts?

Mr. Brown: Sir, people were taking advantage of it, and it tended to be, shall I say, a

quite uneven advantage that was being taken. Some people were able or willing to make gifts during lifetime, and some people were unable or unwilling to make gifts during lifetime. Maybe the tax should be widely differentiated on that basis.

Senator Beaubien: You can give half of your income after taxes.

Mr. Brown: That was the tax free part, but the senator was also asking about the relatively low amount collected which did indicate that some people were making gifts beyond their exemption but, as the senator said, not very many.

Senator Croll: Is there a breakdown to indicate where that amount of \$7 million came from? Do you know the kind of incomes it came from?

Mr. Brown: There is a breakdown in terms of the total gifts made. There are not any statistics available to me on the relationship of the incomes of the donors. If you will give me a minute to find it in these voluminous statistics, I think I can find an indication of the...

The Chairman: While you are looking, Mr. Brown, I might mention—and I know you know it, Senator Croll—that the exemption I mentioned under the existing law was quite a substantial exemption in certain areas of income, because you could gift without tax 50 per cent of the difference between the taxable income and the amount of tax that you paid.

Senator Croll: I am quite aware of that, but I am trying to get at something else.

Senator Molson: That is after the income tax has been paid on it.

The Chairman: Oh yes.

Mr. Brown: The latest table that Mr. Smith has with him relates to the year 1965. I apologize for the fact that it is somewhat out of date, but there were in the year 1965, 2,670 returns on which gift tax was paid. It might interest you to know that only half of those were entitled only to the \$4,000 exemption. The other half were eligible for the higher exemption, or half of the difference between the taxable income and the amount of tax paid.

All but about 230 of these gifts involved circumstances in which the aggregate taxable gifts were below \$50,000 in the year. Indeed,

in 1,200 of them the taxable gifts were below \$10,000 in a year.

In terms of the total tax—the total tax in this year was approximately \$7 million, and about \$5 million of that \$7 million came from people who had made taxable gifts in excess of \$50,000.

Senator Leonard: Have you any estimate of the impact of that \$7 million, or of a part of it, upon the potential estate tax that would have been collected had not this...

Mr. Brown: No, sir, we cannot make that correlation from the statistics.

Senator Leonard: Can you make it in general terms?

Mr. Brown: I suppose one could make this generalization, that if there had not been a substantial saving then it could be asked: Would one have taken the unusual step of paying tax earlier rather than later.

Senator Leonard: That is a fair assumption.

Mr. Brown: That is the only generalization I can make, sir.

The Chairman: Are there any other questions on this aspect?

Senator Phillips (Rigaud): Mr. Chairman, is there any reaction from Mr. Brown to the suggestion you made that these rates be tested out for a period of three years?

The Chairman: I was going to ask a preliminary question of Mr. Brown on that. First, in arriving at a figure which the minister calls an exact amount of replacement of loss revenue by reason of the exemptions granted—he said that \$45 million was needed to restore them. Now, with respect to his use of the word “exact”, and your use of the words “no significant difference” in relation to that amount, was there a calculation made, and, if so, how was it made?

Mr. Brown: Yes, sir, there was a calculation. As the minister said, the effect of broadening the exemption was calculated to reduce revenue from about \$200 million to about \$155 million. Then, on the basis of what would have to be assumptions as to the exact distribution of estates, we made estimates of what the increase in the rates would bring in such a manner as to bring in to approximately \$45 million. Now, the instructions were to bring in to the very amount. I have no such faith in anyone's power to construct a table to bring in to the exact...

The Chairman: You do not operate with a crystal ball? You do not know who is going to die?

Mr. Brown: And, of course, we were not that certain as to what effect this will have on wills.

Senator Thorvaldson: So this is really not a taxing measure at all. It is not a financial measure. It is just changing methods of acquiring the same amount of revenue pretty much, is it not?

Mr. Brown: Certainly the intent was to raise about the same amount of revenue.

Senator Molson: To soak the rich.

Senator Leonard: Are your figures net to the federal Government after any distribution to the provinces?

Mr. Brown: No, sir, the net to the federal Government runs to a little more than a quarter of that figure, because we keep a little more than a quarter of the estate tax from foreign estates.

Senator Leonard: That applies both ways, then? Are you not really contemplating a net loss of \$11 million, and a quarter of the \$45 million to pick up the \$11 million?

Mr. Brown: Yes.

Senator Leonard: It is a great change for that amount of money, is it not?

Senator Phillips (Rigaud): Do you think we could get an amendment that would provide that when the provinces remit to their residents there will be something on the cheque to say that the money is given to them through the courtesy of the federal Department of Finance?

Mr. Brown: The federal Government, sir.

The Chairman: I want to follow this up, Mr. Brown. Is that calculation that was made available?

Mr. Brown: Sir, it was—I can describe it to you, if you like. This is not a public calculation. I can describe to you the assumptions that went into it.

The Chairman: When you say it is not a public calculation, did not the minister introduce it by giving the result of it?

Mr. Brown: Yes, sir.

The Chairman: All I was asking you is whether there was something that was available in the sense that it is existing?

Mr. Brown: Yes, sir.

The Chairman: Now, if I asked you to produce it, are you in a position where you feel you can produce it?

Mr. Brown: I can ask my minister, sir.

The Chairman: And will you?

Mr. Brown: Yes, sir.

The Chairman: Now, you were going to tell us how it was made up.

Mr. Brown: As I say, we have statistics on existing estates, and from those figures we are able to see certain characteristics. For example, we know that in respect of roughly half the estates there are widows, and in the other half there are not. Given certain simplifying assumptions as to how property is left, we ran a computation based on the existing estates, and found out that that assumption as to the method of leaving produced a revenue which was within one per cent of our current revenues, and we then said: If that is a bench mark estate, what would the effect be under the new system? We re-computed the tax. This is where the \$45 million loss came from, It involves the heroic assumption—if I may use that word, and I think I should—that where there is a widow the estate would continue to be left as to about 50 per cent to the widow. If there is a trend of more being left to the widow, clearly the revenue will fall short; if there is a trend of less being left to the widow the revenue will be somewhat larger than it is now. If I may give an order of magnitude, if the trend were to leave the widow 75 per cent in the short term or medium term, there would be a loss of revenue of the order of \$30 million on a base of \$200 million.

The Chairman: In this calculation did you give any consideration to the fact that donee spouses also have a habit of dying, and when they die the revenues would be increased? In other words, what had been lost at the time of the donor's death would be recaptured substantially.

Mr. Brown: There is no doubt that there will be some of that.

The Chairman: Therefore, in succeeding years it is likely that the revenues will pro-

duce an increase beyond this \$45 million which you say is immediately lost.

Mr. Brown: This depends, of course, on how much of it is left when the widow dies. In a whole host of estates the widow does not have the value when she dies.

The Chairman: You have two distinctions, an outright gift and life interest. To the extent that she has a life interest there is something taxable, which may have appreciated in value by the time she dies.

Mr. Brown: Not if the life interest is a pension, which is a typical asset in a small estate in my example. From \$150,000 up you have to have these assumptions as to what will happen in the intervening years.

The Chairman: Would you agree, no matter what assumptions you make, inevitably when the donee dies, by applying the new rate of tax much additional income will be produced in estate taxes?

Mr. Brown: Over time I think there will be additional estate taxes. That is your point.

Senator Thorvaldson: I suppose you have also taken into consideration that there could be a deferment of tax in regard to an estate handed from husband to wife. There could in time be deferment for perhaps a couple of hundred years. Let me give you an example. A husband dies at 80 when his widow is 60; all his estate goes to the widow. Then the widow marries a man aged 40; she reaches 80 and dies, leaving everything to the husband who is now 60. This husband marries a woman aged 40, lives till 80, by which time his widow will be 60. That widow marries a man aged 40 and dies at 80 and so on.

Mr. Brown: In perpetuity.

Senator Thorvaldson: The deferment can be perpetuated under those conditions.

The Chairman: It looks as if you have outlined the specifications for a brand new job in the field of Canadian taxation, that of matching!

Senator Beaubien: Suppose a grandmother married a grandson!

The Chairman: Mr. Brown, has any thought been given to, or has there been discussion of, the additional income likely to result in years subsequent to the first year from the new rates by reason of deaths of donees and the increases in revenue? Has any thought

been given to the idea of having a period, say, two or three years, in which the present rates applied, and on the history of performance it would be decided whether the rates were needed, or whether lower rates would produce the result it was sought to achieve?

Mr. Brown: I think governments keep rates, exemptions, and tax loads under review year after year after year. It is a normal part of the budget procedure, so in that sense the estate tax rates will be looked at, if not continually, at least at regular periodic intervals.

The Chairman: That is not my question. My question is this. Since the design of this increase in rate is to maintain a level of income from estate taxes, should you not have a period of time during which you would have an opportunity of studying whether the design works or not? If it works and produces excess income over what has been speculated, then the Government would be earning more from this field, and this has not been the announced policy at this time.

Mr. Brown: I think my answer is that the Government annually has an opportunity to review rates in the light of that and all other considerations.

The Chairman: Would you care to illustrate some cases in the period of the last five or six years in which the rates have been reduced in any field of taxation?

Mr. Brown: I would have to search fairly hard.

The Chairman: Yes, I would think so.

Mr. Brown: I could mention the spring budget of 1965 when there was a 10 per cent abatement of personal income tax. I hasten to say that the next year it disappeared.

The Chairman: The spring disappeared very quickly. That was just the first blush of spring.

Senator Leonard: If the higher rates were applied for only a given number of years some of us might postpone our deaths for a little longer!

The Chairman: That might be another occupation arising from this.

Mr. Brown: A deep freeze!

The Chairman: There is a distinction that you must recognize in an annual internal

review by those charged with studying these rates in the department to see whether revenues are living up to expectations or whether they are in excess of expectations. If they are in excess, very rarely do you find that reflected in a reduced tax rate.

Mr. Brown: On that I should like to say two things. First, it is an annual review not within the department basically. It is an annual review by the Government. We do the staff work, so there is a distinction there. Secondly, these reviews have been carried on in the last several years at least against a background of increasing total expenditures for purposes that have been Government policy passed by Parliament. In that framework there is very rarely much room for a reduction of tax rates. If expenditure goes up, taxes go up; if expenditure comes down, taxes come down. The post-war years are perhaps illustrative of a time in which because expenditures were falling taxes were falling. There is an inevitability about the relationship between the two.

The Chairman: That is quite true, but if the design of an increased rate is to make up a loss of revenue, when you talk generally about an expense increasing so that there must be an increase in taxes, we should have the opportunity of seeing whether we approve of the areas in which this money is coming from for these new expenditures. We are now asked to deal with that on the basis of supplementing or maintaining the flow of tax revenue from estate taxes.

Now, perhaps in the future you will say that we do not find taxes going down because expenses are going up. We know very well that taxes do increase, but if we cannot control it, at least we should have the opportunity of reviewing those expenses in relation to which they require additional moneys, and they should not get the moneys on the basis of maintaining the level of revenue from the estate tax and then find that in subsequent years it produces more money than was calculated and that that money is going to be used for something else, and we do not get a chance to say anything about it. That is a policy statement. You do not have to say anything about it. I want that on the record so that the Minister will see it.

Senator Phillips (Rigaud): Mr. Brown, has the department considered the feasibility of applying different rates of estate taxation to liquid assets as against industrial and commercial enterprises? And, if it has considered

it, has it come to any conclusions as to whether it is feasible to apply different rates?

Mr. Brown: Administratively, it is feasible.

Senator Phillips (Rigaud): It is administratively feasible?

Mr. Brown: Yes. You can identify assets and apply different rates, just as, for example, we have different rates of tariff on imported goods coming across the border. It is feasible. It becomes a policy consideration whether that is a fair way to levy tax.

Senator Phillips (Rigaud): So we move over into policy.

Mr. Brown: And over, too, into this area of administration. I think it would be very difficult to differentiate between the man who bought, shall we say, a farm in contemplation of the lower rate and the man who bought a farm because he wanted to farm. It would not be impossible to set up a framework of tests, but you understand how hard it would be to really distinguish between the two. It could be done only through arbitrary tests.

Senator Phillips (Rigaud): Once you agree in principle, the question of the purchase with a view to reducing the rates of taxation could be covered by an income tax amendment, such as 137 and 138 if it were being done for the purpose of minimizing or avoiding taxation.

It is our duty in this committee, once we have officials before us who are, presumably, men of competence, to get their singular points of view, rather than merely dealing with, for example, the current rates of taxation. As a matter of policy, a senior Government department such as yours should give serious consideration to the question of differentiating between liquid and non-liquid assets.

You have a very simple category. Money is money, and security is equivalent to money. Evidences of indebtedness in public companies, and all that sort of thing, should be put in the category of true liquid assets, whether you define liquidity under the Bank Act or under the International Monetary Fund Act, and all other assets are not liquid assets.

There would be a terrific nation wide reaction by way of incentive, if this differentiation were drawn.

Mr. Brown: There is the question of shares of a holding company being held by another holding company and so on.

Senator Phillips (Rigaud): I would say a holding company of an individual, to the extent that he included and put into his holding company securities, would clearly be a tax minimization plan. You simply look through it the way you look through personal corporations for income tax purposes, which is done over and over again. Obviously, it could make sense. You would look through the corporation to get to liquidity. Once you did that, in my humble opinion, this would be a sensational—well, I do not want to overdramatize, but it would be a marvelously constructive factor in encouraging individuals in this country in the building-up of businesses and the like because of this terrific fear of going into a plant, equipment, inventory and commitments in the future, when you begin to get a little flutter of the heart and all the rest of it in trying to decide whether you want to make commitments because you may have to give liquidity. You may receive a message in the middle of the night. So you have a flutter of the heart and you slow down the economy in the process. I think it would be marvelous if you moved in that direction.

Senator Burchill: There is an actual case of a gentleman who came to see me last week, a man that I know personally, who during his lifetime—and, by the way, this man cannot read or write but is an able chap—accumulated an estate of \$400,000. His estate is all invested in real estate. Some of it is in timberland. He has very little cash. He is a widower. His wife died two years ago. He came to me and said, "What am I going to do? The only thing I can do is get married. She is out in the car. Come out and meet her."

Senator Beaubien (Bedford): What was her age, 20?

Senator McDonald: During the discussion following second reading in the house, there was some comment made by yourself, Mr. Chairman, and others with respect to the fact that many Canadians are seeking tax havens, some within our country and some outside. I am wondering if there are any Canadian taxes that apply to money that is moving out of Canada to tax havens. Is there any federal tax that applies to this money?

The Chairman: Only the withholding tax, if some of the assets that are physically moved out may result in dividends being paid from Canada.

Mr. Brown: May I say, too, though, sir, on the death of a Canadian holding assets abroad, those assets come into the computation of the estate tax.

The Chairman: Only if he stays in Canada.

Mr. Brown: If he is domiciled in Canada.

Senator McDonald: But if he leaves this country and takes up citizenship abroad, have you given any thought to taxes of this sort? God forbid that I should suggest another tax. I only suggest it in the hope that, if they could get revenue from this source, it might lighten the burden on people who see fit to remain in Canada.

Mr. Brown: It is not true to say that we have not given any thought to it, but we have not given much thought to it.

The Chairman: You can not put an embargo on the movement of capital. If a man follows his capital, whether he gives up his Canadian citizenship or not, what is the use of saying he is a Canadian subject to this tax, if there are not any assets here? They certainly could not go into another country and sue for the tax.

Mr. Brown: The Americans do follow their citizens.

Senator McDonald: It encourages people to leave rather than to stay in Canada. It seems to me that this is a bad principle.

The Chairman: Mr. Brown says that Americans follow their citizens. They do follow their citizens to the extent that even though they are outside the United States, for instance, their income tax is based on citizenship in the United States. It is based on residence here in Canada. While an American living in Canada may be obligated to make income tax returns to the United States, if he does not, there is no immediate penalty visited upon him. If he wanted to go back to the United States some time, he would be in a lot of trouble, however.

I was discussing the practical side of it. If there are no assets in Canada, then you can levy a tax and present a bill but you will not get paid.

Senator Thorvaldson: Mr. Chairman, does the genesis of this bill reside in the Carter Report? In other words, are the changes made by this bill in any way similar to the recommendations in that report?

Mr. Brown: It is fair to say that the genesis of the bill is in the debate that followed the publication of the Carter Report and in the decision of this and the previous Government to make a fundamental review of the tax system. In fact, that decision preceded the report, so far as that goes, but it was coincident with the royal commission and one of the large inputs was, on the one hand, the royal commission report, and, on the other hand, all of the representations and briefs concerning it.

The Chairman: It is quite likely that, if one phase of the Carter Report were implemented, that is, the capital gains tax, and were applied to estates, the capital gains tax whether it is at a special rate or at the income tax rate, plus the estate tax rate, would really demolish an estate.

Mr. Brown: There would be a double incidence of tax at the same time.

Senator Connolly (Ottawa West): What did Mr. Brown say?

Mr. Brown: There would be a double incidence; there would be two taxes falling at the same point in time.

The Chairman: This was one of the suggestions of Mr. Carter.

Mr. Brown: But I was going to go on and say there are some aspects of this bill which indicate some sympathy for some of the points raised in the royal commission report and in almost every other brief. The exemption for widows falls in this category. It is very hard to find a brief put in on the subject of tax reform or review which did not plead for an exemption for widows.

Senator Molson: Was that not widows' pensions?

Mr. Brown: No, I think the outstanding example of the grievance was pensions, but the Chambers of Commerce's submission did not refer only to widows' pensions, but to widows exemptions. Let us be fair, there is hardly a brief which suggested that the rates should be raised!

The Chairman: We would not expect that.

Mr. Brown: We have never had such a brief in my brief experience with the department, but you could clothe that change as being in some way parallel to the Carter suggestion. However, the basic Carter sugges-

tion was that a dollar was a dollar was a dollar, and that an inheritance should be treated in the same way as a pension or any other form of annual income, and should be taxed as such. I think that they spoke of a \$5,000 lifetime exemption, which would mean that the beneficiary would be taxed on the first dollar of his inheritance over \$5,000 at his marginal income tax rate.

Senator Phillips (Rigaud): "A dollar is a dollar is a dollar" might be as intelligible as some of Gertrude Stein's poetry: "A rose is a rose is a rose."

The Chairman: And other things.

Mr. Brown: In some fundamental respects it is turning its back on Carter, and in others it is not.

Senator Thorvaldson: I take it also there was no consultation with the provinces before this bill was drafted?

Mr. Brown: Only in the sense that there were discussions with the provinces against the framework of knowing we were going to be reviewing the tax system in a fundamental way and the provinces had available to them the recommendations of their provincial royal commissions and committees and a full explanation of Carter and access, by reason of duplicate filing, to almost all the briefs.

Against this background, we had discussions with them and tried to get their views on every aspect of the tax system. In as much as we have a long history of budgetary secrecy, the federal Government could not say, "We propose to do so-and-so. What do you think of it?" But we tried at the officials' committee, and the ministers at the ministers' committee—both Mr. Benson and Mr. Sharp before him—to draw them out on the whole range of issues concerning the tax system and while we could not consult on specifics, we did our best, within the constraints, to get the feel of their views on the general principles.

The Chairman: I take it you are aware of the fact that in the Federal-Provincial Fiscal Arrangements Act of 1967, in the portion of it which deals with succession duties payments to provinces, there is no terminal date?

Mr. Brown: Yes.

The Chairman: Is there any significance to be attached to that?

Senator Beaubien: What is that?

The Chairman: There is no terminal date. For equalization payments there is a terminal date.

Mr. Brown: I was not privy to the discussions leading up to that and, therefore, I would only be hypothesizing.

The Chairman: You do know from section 5 of that act that the federal authority is not obligated to pay any specific amount of money out of its estate tax take in the particular province; it is all on a percentage basis.

Mr. Brown: Yes, that is perfectly correct. The background of the situation is well known. They cannot levy an estate tax constitutionally. If we are to avoid...

The Chairman: But I am talking about succession duty payments, and I am talking about the obligation under this Federal-Provincial Fiscal Arrangements Act to pay 75 per cent of the total amount of estate taxes collected in a province to those provinces who have rented out their succession duties field.

Mr. Brown: I was trying to respond to that by saying that they cannot levy an indirect tax and, therefore, they cannot levy an estate tax. When the federal Government, in 1958, decided to move to the estate tax, it had open to it, it seems to me, one of the options: first, to go its own way and leave the provinces either to collect succession duties in those which decided to have them, or to get out of the death duty field altogether. Because they could not have an harmonious system—it is constitutionally impossible—once the decision was made by the federal authorities to move the estate tax, so what the federal government did was to take the second option—you expressed it as a tax “rental” which is good shorthand for it—what they said was, “If you do not levy a succession duty, we will give you three-quarters of what we collect on the estates in your province.”

The Chairman: That is the only phase I am concerned with at the moment. I was not concerned as to the reasons why the estate tax law, as such, presently had difficulties with relation to the provinces.

Mr. Brown: This carries with it a connotation that so long as the constitution is the way it is, the federal Government likely will feel that it wants to continue its offer to the provinces in order that those who wish to can avoid having two complicated laws applying in this field.

The Chairman: That raises a question I will deal with in a moment, but you have still not got down to the question that concerned me.

Mr. Brown: I am sorry.

The Chairman: Of the \$45 million, which is the increase in rates designed this year to maintain the level of estate tax revenue, 75 per cent of it is to be paid to the provinces?

Mr. Brown: Right.

Senator Leonard: In those cases.

The Chairman: In the seven provinces that have rented. Then in Ontario and Quebec, we pay them 25 per cent. In British Columbia we abate 75 per cent, and in Ontario and Quebec we abate 50 per cent, so we are bringing up the level of the estate tax revenues so as to be able to continue on the same basis in dollar amount what we paid this year, or what we paid in 1968, without any statutory obligation under the Federal-Provincial Fiscal Arrangements Act, because our obligation was only to pay a percentage of what we collect.

Senator Leonard: Is that quite right in the case of Ontario? Is not Ontario 50 per cent?

The Chairman: There is an abatement of 50 per cent, and since Ontario did not increase its rates in 1964 the federal authority pays them 25 per cent, and in Quebec the same thing applies.

Senator Molson: Mr. Chairman, might I ask Mr. Brown—I want to word it so that it does not get into policy—was there any discussion as to a course of action if all the provinces follow Alberta and Saskatchewan; if all the provinces decide to get out of the death duty business?

Mr. Brown: Again, as I said, I cannot say there was not any discussion, but there was not much discussion.

The Chairman: But you have an inequity resulting. In Alberta and Saskatchewan now the federal authority pays 75 per cent—that is the cost of the rental—and we are supplementing that to the extent that these rates are increased, and the 75 per cent will maintain the level of the payments in the previous year, and yet in those provinces that amount of money is immediately refunded or rebated to the fortunate estates in those provinces. So, you have these geographic inequities as a result of provincial action, and yet those who cannot take advantage of it are assessed at

the high rate so as to provide more money that can be returned to the estates in those provinces. There seems to be some inequity somewhere in it.

Senator Molson: Quebec is at the bottom of the totem pole.

Senator Phillips (Rigaud): Quebec is again being discriminated against.

Mr. Brown: If we had a comparable situation in respect of estate tax to that in respect of income tax, where we have a schedule of rates and then reduce them by 28 per cent, we could reduce our rates by three-quarters in all of the provinces, and it would then be up to the provincial governments to decide whether to levy estate tax and, if so, at what rate. There would be some difference between provinces, but there could be no suggestion that more money was being obtained from Quebec in order to pay Saskatchewan.

The Chairman: No, I was not suggesting that. You said something about the desirability of estates being taxed under a federal statute. You thought that this might lead to a uniform action in the provinces. But, if there was any idea, when sharing originally took place, that it would lead to uniformity, then surely we have enough tangible evidence now to show that it would be difficult to have less uniformity than what we have now?

Mr. Brown: Sir, we have an identical determination of the base for tax in all but three provinces, and we have the Ontario White Paper which now has suggested that Ontario will cancel their succession duties, give up the abatement, and collect the 75 cents out of each dollar from the federal Government.

The Chairman: Was not that part of the White Paper that constituted quite a substantial amount of wishful thinking that it would establish a basis for negotiations?

Mr. Brown: It may be, sir. That remains to be seen.

The Chairman: Yes, this was looking into the future.

Mr. Brown: But somewhere along the line we lost British Columbia. They went out. In that sense that we have less rather than more uniformity: the hopeful point, as I say, is the point in the Ontario White Paper, the end result of which, as you say, remains to be seen.

Senator Connolly (Ottawa West): Could I follow up along those lines a little further? There is certainly confusion arising out of the fact that the federal authority can levy estate tax, and the provincial authorities are restricted to succession duties. Would it make for a simplification of the death duty taxation system if the provinces had the authority to levy an estate tax? I know it would have to come by means of a constitutional amendment, but would it, first of all, simplify the procedures and, perhaps, the application of the law?

Mr. Brown: I think, senator, there is no doubt that it would make it possible to have a great simplification on the estate tax basis. Of course, it would depend upon the ability of the provinces and the federal Government to reach a state of harmony.

Senator Connolly (Ottawa West): And in an endeavour to streamline the tax system this might be a step forward, if there could be agreement?

Mr. Brown: Yes, I think that that is true.

Senator Beaubien: Mr. Brown, I want to ask you a simple question: If somebody dies now can his estate apply the old law, or just the new law?

Mr. Brown: You have a limited option. You have an option of using the old exemptions if those are more advantageous than the new ones, but not the old rate schedule.

Senator Thorvaldson: May I ask whether consideration has been given to this problem, Mr. Brown? I come from Manitoba, and as I see it one part of the great unwisdom of this bill at the present time is in the fact that we seem to be entering into an estate tax jungle in Canada at the present time. Alberta has already passed an act under which they rebate their share of tax. Saskatchewan has done the same thing. Whether we in Manitoba want to do that or not, the fact is that we are compelled to do it. The reason is obvious. In Manitoba, for instance, there are a number of wealthy citizens, many of whom are getting elderly, and those citizens are just not going to remain in Manitoba unless Manitoba passes similar legislation to that passed by Alberta and Saskatchewan. We know from the Throne Speech...

The Chairman: Well, the bill is already before the legislature.

Senator Thorvaldson: Yes. My question is this: Why interfere with the present situation when we seem to be in a complete state of flux in Canada?

Mr. Brown: Senator, there is no satisfactory answer to your question, but I would point out that the Alberta legislation was passed under the old system. Premier Thatcher made his commitment to put through this legislation under the old system. The Premier of Manitoba could have done the same thing. I am sure that there is no doubt that the budget in October brought about an increased awareness of estate tax and death duties in this country, and that may have precipitated the pressure in Manitoba. My hypothesis would be that wealthy people are well aware of death duties, and perhaps the same pressure would have come in Manitoba under the old system as is coming now under the new.

Senator Leonard: May I follow up on this line of thought by asking: When the federal-provincial fiscal relations and grants are being considered, do not the discussions and the agreements take into account the fact that the net amount from the estate tax to Alberta and Saskatchewan is being rebated to the taxpayers?

Mr. Brown: They take account of it to a limited extent, sir. The basic situation, of course, is that they have their rights to levy tax and they have their rights not to levy tax, if you will. The federal Government position has been that it ought to respect those rights, so there has never been a suggestion that the federal Government should say Alberta should levy a sales tax whether it wants to or not simply because the other provinces have one.

Senator Leonard: This goes further than that. It goes to the actual rebating of a federal tax to the taxpayer.

The Chairman: You mean whether the federal authority would attempt a tax rebate.

Senator Leonard: You really ought to take into account the fact that the fiscal need of the provinces in the general picture of the dominion-provincial grants is reduced by the fact that it does not in effect take this money.

Mr. Brown: The equalization formula in the act is based upon what they could get if they levied national average rates, and as a consequence a province such as Manitoba, which may chose to rebate, will not get an increased

equalization payment as a result of a decision to rebate. Its needs will be measured as though it had the national average rate. There is no offsetting federal advantage in fiscal terms if a province decides to rebate the estate tax. There is not on the other hand any sort of offsetting...

Senator Phillips (Rigaud): Increase because of the fact it has not got it?

Mr. Brown: That is right.

Senator Leonard: Because of that expenditure on its part it is free to give that money away.

Mr. Brown: As free as with any other money it raises.

Senator Phillips (Rigaud): I do not want to be crude about it, but I think the federal Government is casting itself into the position of being a patsy in the sense of exposing itself to collection from the citizenry at large for transmission to beneficiaries in certain provinces. That is the net result of it. There has been a hue and cry about this bill because of the escalated rate. There is a sacrifice in terms of salt on wounds because we do not even have the satisfaction of money in the federal treasury to deal with national policy. That would not be so hard in itself to collection from the citizenry at large revenue for the provinces, but when we follow through and find the provinces returning it to individuals in the provinces, that is a little hard to take.

The Chairman: Honourable senators, I think we have done pretty well with our general questioning this morning. I would suggest that we do not embark on a consideration of sections of the bill until we have heard representations from the various groups who are coming next week. Is that agreed?

Hon. Senators: Agreed.

The Chairman: I raised one or two points when speaking in the Senate, which I have discussed with the departmental representatives, concerning clarification of language. The difference between us is that they think the language is satisfactory to accomplish the intent and I think the language leaves some doubt. These are things that we could discuss much better after we have heard the representations. I think that mainly the submissions from those who are coming will be in the area of administration, and clarification

and simplification for administration. I would therefore suggest that this may be a good time to adjourn. We have been at it for two and a half hours.

Senator Burchill: Do not forget the minister.

The Chairman: No, I will not forget the minister.

Senator Leonard: Who are we having next week?

The Chairman: Next week, as I indicated, we shall hear from the Trust Companies Association of Canada, the Ontario Branch of the Canadian Bar Association and the Canadian Construction Association, and I think the Chartered Accountants Association.

Senator Leonard: I was going to suggest it would be helpful if we asked the secretary if we could have in our hands before Wednesday some of the material they intend to present, rather than wait until Wednesday.

The Chairman: Mr. Jackson will get in touch with them today.

Senator Phillips (Rigaud): Before we adjourn, I am sure honourable senators would agree with me in wishing to record on my own behalf, and acting as spokesman for my colleagues, thanks to Mr. Brown for his very instructive and helpful presentation.

The Chairman: Thank you, Mr. Brown.

The committee adjourned.

APPENDIX "A"

THE CANADIAN INSTITUTE OF
CHARTERED ACCOUNTANTS

November 18, 1968.

The Honourable Edgar J. Benson,
Minister of Finance,
Government of Canada,
Ottawa, Canada.

Dear Sir:

This letter is submitted by the Taxation Committee of The Canadian Institute of Chartered Accountants in the hope that it may be of some assistance to you and your officials as you prepare for the introduction of legislation amending the Income Tax Act and Estate Tax Act following the budget resolutions introduced in the House of Commons on October 22, 1968.

We realize that some of our comments and concerns may be premature and that many matters will be clarified after the amending legislation is brought down. If this submission proves to be of some assistance to you in the process we will have achieved our primary purpose. We would, of course, be pleased to meet with you or your officials if you would like to discuss any of the points contained in this letter.

Before dealing with specific budget resolutions we wish to mention a matter which is of concern to us. It has been our understanding for some time that the public at large would be given ample opportunity to consider major tax reforms before actual resolutions were proposed. We consider the resolutions with respect to estate tax, gift tax and financial institutions to be of major significance and we are surprised and somewhat disappointed that they have been introduced in this manner. It is also obvious that the public at large did not expect such major reforms to be first presented in the form of Budget Resolutions. We trust that other tax reforms which are to be disclosed in early 1969 will be presented in a manner which will ensure thorough study and representation by the public and by interested bodies such as The Canadian Institute of Chartered Accountants.

INCOME TAX ACT RESOLUTIONS

Corporate Instalment Payments—Resolution No. 16

It will be almost impossible for small companies to base their instalment payments for the first four to six months of the taxation year on the prior year's taxable income. Financial statements and tax calculations will simply not be available in time. Some relief must be granted to alleviate this hardship and particularly potential assessments for interest. Possibly estimated instalments could be based upon the taxable income of the second prior year, as was done when the Special Refundable Tax was first introduced. Alternatively, the estimated payments for the first four or five months could be based upon the taxable income of the second prior year and any underpayment based upon the taxable income of the prior year would be payable at the time of the sixth instalment.

Non-resident Withholding Tax—Resolution No. 18

The resolution would appear to require 15 per cent withholding tax on "shared cost" payments to non-residents. It is not unusual for Canadian companies to reimburse non-resident, related companies for the costs of certain research and development programs. Since the non-resident would have no net foreign income, it would not be able to claim a foreign tax credit for the Canadian withholding tax. This could result in Canadian companies having to pay an additional amount in order to obtain "shared cost" know-how which is so desirable and valuable to Canadian companies. It would seem appropriate to exempt specific payments from withholding tax, as was done in the case of management or administration fees.

Unpaid Salaries, Wages and Bonuses—Resolution No. 13

The proposed resolution with respect to unpaid salaries, wages and bonuses raises the same question which presently exists with respect to unpaid amounts in non-arm's length transactions under Section 18. Once the deduction is added back to income, no deduction is subsequently permitted when the amounts are actually paid. Provision should be made to allow a deduction in the year of payment with respect to

the above-mentioned expenses. This would be similar to the treatment permitted with respect to the repayment of loans to share holders under Sections 11(1) (da) and (db).

There may be instances where union contracts for example require an employer to accrue extra vacations with pay over a period of say five years. Unless the employee will sign the necessary agreement with the employer there may be an unintentional-penalty.

We do not know whether the new provisions will apply to amounts accrued in the past or only to amounts accrued subsequent to October 22, 1968.

We assume that provision will be made so as not to apply both this resolution and Section 18 to unpaid salaries, wages and bonuses in non-arm's length transactions.

Medical Expenses—Resolution No. 3

It has been proposed that certain additional types of medical equipment be added to the list of allowable medical expenditures under Section 27(1)(c) of the Income Tax Act. We believe that it would be more desirable if the Act were amended to set out certain general principles as to the types of medical expenses which qualify for the deduction and any detailed recital of the particular types of expenditures were dealt with by regulations made pursuant to such general provisions.

Grain Storage Facilities

Are there strong reasons to exclude persons who acquired grain storage facilities prior to August 1, 1968 from the benefits of accelerated depreciation? Would it not be possible for this regulation to apply to grain storage facilities acquired after say December 31, 1967?

Investment Income in Life Insurance Proceeds—Resolution No. 6

The investment income being taxed under this resolution is a form of "lump sum payment" since it will have been accumulated over a number of years but will be received in one taxation year. This investment income might well be taxed under some averaging provisions, as are most other types of lump sum payments.

We would assume that assigning a life insurance policy to a bank as collateral or obtaining a loan from the insurance company would not constitute surrender of the

policy within the meaning of this resolution.

Where a life insurance policy is transferred by way of gift, the resolution does not indicate what the donee's deemed cost will be. Shouldn't the deemed cost to the donee be the same as the proceeds deemed to have been received by the donor?

A taxpayer who elects on the surrender of a life insurance policy to receive an annuity instead of accepting a lump sum payment in full settlement of the policy should be allowed to pay tax thereon as the annuity payments are received and, in any event, should not be placed in a position less advantageous than a taxpayer who had bought an annuity.

Reporting of Interest and Dividends

The requirement that interest and dividends of \$10 and over be reported by the payor for the 1968 year will lead to serious inconvenience and hardship to many taxpayers whose accounting systems are not presently programmed to furnish this information to the recipients of such income. It is suggested that this proposal should not be applicable until the 1969 fiscal year.

Life Insurance Companies—Resolution Nos. 7 and 8

We are unable to assess the full impact of the proposed changes in the taxation of life insurance companies until the proposed regulations under these provisions are made public. It is noted that the life insurance industry will be consulted in the course of preparing these regulations. We welcome this proposal and express the hope that the industry and any other interested parties will be consulted on all aspects of the proposed changes in this area.

The taxation of investment income at the life insurance company level (as opposed to the policyholder level) discriminates against non-taxable policyholders who would not be taxable otherwise. Would it not be possible to develop some form of gross-up and credit which would provide a measure of relief to the low income policyholder?

Gift Tax—Resolution No. 2

Numerous questions have been raised and comments made with respect to the proposed Gift Tax amendments.

1. If the intention of Resolution 2(a)(ii) is to restrict exempt gifts to any one individual to \$2,000 a married couple

appear to have the opportunity to broaden the limit by the simple expedient of the husband first making a gift to his wife who in turn may make a similar gift of \$2,000 to the same individual. This will have the effect of permitting \$4,000 of wealth originating with the husband to be transmitted exempt to one individual donee.

Because this capacity would most likely be exercised in favour of children, one may question the equity of a situation where this is available to a married person but denied to a widower or widow.

Would it not be preferable to increase the exemption to \$4,000 and at the same time limit the gift tax exemption of a married couple to the same as an individual, namely \$4,000?

2. Of perhaps greater concern is the lack of equity between spouses domiciled in Quebec and other parts of the country. The Quebec Civil Code precludes inter-vivos gifts between spouses which are not specifically covered by their marriage contract, thus effectively denying to them the facility available to spouses domiciled elsewhere.
3. Since inter-vivos gifts between spouses are now exempt from gift tax, is it anticipated that the donor-spouse will remain liable for tax on the income earned on such donated property under Section 21 of the Income Tax Act? If the donor-spouse is no longer to be liable for tax with respect to such income, doesn't this conflict with the situation in Quebec where the gift will not be recognized for Quebec income tax purposes in accordance with the provisions of the Quebec Civil Code?
4. With the quasi-integration of the gift tax and estate tax, is there any conflict with the Federal-Provincial tax sharing arrangements since the provinces do share in the estate tax revenues but do not share in the gift tax revenues?
5. Has there not been some retroactive effect in the repeal of the former gift tax exemptions (Section 112(2)) for persons other than the donor's spouse? Taxpayers have relied upon the annual exemption equal to one-half the difference between the prior year's taxable income and federal tax liability, and

many persons have consistently made annual gifts at Christmas or towards the end of the calendar year to the extent of their maximum gift tax exemptions. Indeed persons in Western Canada were able to take advantage of such exemptions by "midnight gifts" on the evening of October 22, 1968. It would seem that equity would dictate (and little revenue would be lost) that the old gift tax exemptions be available through December 31, 1968, or alternatively that a taxpayer have a choice of utilizing either the old or the new gift tax exemptions for the calendar year 1968.

6. Section 112(3) of the Income Tax Act exempts gifts of not more than \$1,000 from gift tax but if a gift exceeds \$1,000 then the exemption is lost. We would hope that it is not the intention to submit to tax the full amount of any gift which exceeds the new \$2,000 exemption as set out in Resolution 2(a)(ii).

ESTATE TAX RESOLUTIONS

1. While we appreciate the difficulty of making major changes in the taxing statutes while at the same time not creating hardship for certain individuals we must comment on the present uncertainties in the field of estate taxation. Individuals who have planned their estates are now in the invidious position of knowing that important and fundamental changes are necessary but not knowing the precise form of the new law. It is vital that the amending legislation be made law as soon as possible so that appropriate action can be taken by taxpayers to avoid being penalized through no fault of their own.

2. Estate taxes and gift taxes are now so high (despite tax-free transfers between spouses) that the undesirable art of "off-shoring" might flourish. Senior citizens may seriously consider leaving Canada in order to leave more to their heirs, with the result that the Government may generate less revenue than if it had retained a more reasonable rate structure.

The proposed changes accentuate the "time-honoured" problem of the major shareholder of a closely-held corporation. The income tax liability in removing corporate surplus in order to satisfy death duties too often leaves little or nothing for the heirs. This problem, particularly in light of

the increased estate and gift tax rates, must quickly be remedied.

3. The changes in exemptions have done nothing to facilitate the transmission of a family business within the family. It is desirable for such businesses to remain in the hands of Canadian families, and the transmission is generally to the children and not to the spouse of the deceased person. The old \$60,000 exemption will be lost, and the exemption of transfers between spouses will be of little value if the family business is to be transferred to the succeeding generation.

4. Is there any reason why an exemption should not be available for other dependants such as a parent, as is available for a dependent child? The financial responsibility is oftentimes as great, if not greater, and there would appear to be little reason to differentiate.

5. If a testator in one of the provinces imposing succession duties left a life interest in his estate to his widow, with the remainder to his children, provincial succession duties would become immediately due on such estate, even though federal estate tax would be generally postponed until the death of the widow. These provincial succession duties would presumably be paid out of the estate itself, and would then be considered as an immediate transmission, taxable under federal estate tax rules, to the children. This could create a liability for a federal estate which could conceivably be treated as a further transmission to the children, giving rise to additional tax and so on. Thus, the simplicity of a life interest in estates passed free of tax to surviving spouses will not be attained in those provinces which continue to levy their own succession duties.

6. If a decedent resident in a province levying its own succession duties were to leave a life interest in his estate to his widow, no federal estate taxes would become payable on such transmission (as noted above) while substantial provincial taxes could be exigible. If the surviving spouse then moved to a province which did not levy its own succession duties, and subsequently died while domiciled in such province, the federal estate tax would presumably be imposed on the entire value of the life interest passing, without any credit for the provincial tax previously payable.

In a reverse situation, it would be possible for a taxpayer to obtain a substantial credit for provincial taxes against his federal estate tax, while in fact no provincial taxes would ever become due.

7. There are trusts and wills presently in existence, with respect to living settlors and grantors, which for various reasons cannot be altered. Should consideration be given to the enactment of some relieving provisions for hardship cases of this kind?

8. From the language of Resolution (b)(ii), it is not clear whether property left in trust for the benefit of a surviving spouse under the will of a person who died prior to October 23, 1968 would be taxable in the estate of the surviving spouse. It must be intended that such property would not be taxable a second time upon the death of a surviving spouse, pursuant to the above resolution, where such property would not have been included in the estate of the surviving spouse prior to such resolution. Compare Resolution (b)(iii) which makes it quite clear that only inter-vivos transfers in trust for a spouse after October 22, 1968 will be included in the taxable estate of the surviving spouse.

The exemptions for a testamentary transfer to a spouse under Resolution (a)(ii) and (iii) appear to require that only the surviving spouse, and not the children, be able to benefit from the property transferred. Wouldn't it be advisable to permit children to receive or enjoy such property for limited and specified purposes, such as medical expenses, education, etc., and still permit the exemptions to apply?

GROWING COMPLEXITY OF TAX RETURNS

We have been increasingly concerned over the years with the growing complexity of the tax returns which the individual is required to complete. This is particularly true of the calculation of the tax itself. (The 4 per cent Old Age Security Tax; the 3 per cent Surtax related to the basic tax less \$200; the 2 per cent Social Development Tax and of course the provincial tax abatement.)

The increasing complexity of tax returns is a factor which contributes to errors. Errors can, in turn, cause taxpayer annoyance to say nothing of additional administrative costs and delays.

Simplicity in taxation is highly desirable but not always achievable and it is undoubtedly difficult to translate complex provisions into simple tax returns. Nevertheless we wish to make a strong plea for continued attention to simple tax form design which contributes not only to greater accuracy by taxpayers but to reduced administrative costs.

In connection with the preparation of these increasingly complex tax returns we believe

that serious consideration should be given to allowing the costs of preparing annual income tax returns as a deduction in calculating taxable income. We understand that such a deduction is permitted in other countries.

Respectfully submitted,
E.J. Newman, Chairman,
Taxation Committee,
The Canada Institute of Chartered
Accountants

APPENDIX "B"

Clipping from Montreal Star - March,
1969. Tax talk

RATES TELL ONLY HALF...

By D. R. HUGGETT, C.A.

Many have decried the estate tax changes passed by the Commons February 20, 1969, and, certainly, a brief glance at the bare rate schedules would seem to indicate that the rates of tax have been increased quite considerably.

However, the rate schedules are only half the story and a realistic appraisal requires that the dollars and cents costs be examined in greater detail. Comparisons of the old and new estate tax rates are complicated because of the inclusion of prior gifts, the elimination of the basic exemption and the different exemptions for children.

However, a rough comparison may be made if one assumes that the deceased was a widower (\$40,000 basic exemption under the old act, none under the new) with two non-dependant children (no exemption under the old act, \$20,000 under the new) and had not made any taxable gifts after October 22, 1968 (or within three years of death). The effective burden of tax under these assumptions is shown below:

TABLE I

Comparison of Old and New Estate Taxes		
Value of Estate	Old Estate Tax (1)	New Estate Tax (2)
\$	\$	\$
100,000	10,200	10,800
200,000	33,600	39,700
400,000	90,700	129,200
600,000	157,100	229,200
800,000	231,500	329,200
1,000,000	313,900	429,200
1,500,000	544,300	679,200
2,000,000	795,700	929,200

(1) Basic exemption of \$40,000 and no gifts within three years of death.

(2) No spouse exemption, no taxable gifts and exemption of \$20,000 for children.

In the majority of cases, the major part of an estate is owned by a husband who is usually survived by his wife. If one assumes again that the couple have two non-dependant children and that the husband uses the marital or

spouse exemption to the extent of one-half of his estate, the burden of the new estate tax diminishes without taking into account the benefit derived from postponing a portion of the tax until the death of the wife.

An example under these circumstances is shown in Table II.

Assuming a 5 p. c. simple annual yield, a wife would have to outlive her husband by 13 years at the \$2 million level to make the new rates equal to the old. At the \$600,000 level, a spouse need only live for three additional years to make the new rates beneficial and, for estates of \$485,000 or less the new estate tax is less in absolute terms.

Inasmuch as wives outlive their husbands statistically by about seven years, it can be seen that the new rates of estate tax may not be quite as bad as they have been painted. Moreover, there appears to be more scope for sensible estate planning which, if properly carried out, may make many families rather pleased with the new changes.

TABLE II

Comparison of Old and New Estate Taxes				
Value of Estate	Old Estate Tax (1)	New Estate Tax		
		Death of Husband (2)	Death of Wife (3)	Total
\$	\$	\$	\$	\$
100,000	6,200	1,500	1,500	3,000
200,000	28,600	10,800	10,800	21,600
400,000	84,500	39,700	39,700	79,400
600,000	150,100	80,200	80,200	160,400
800,000	223,700	129,200	129,200	258,400
1,000,000	305,300	179,200	179,200	358,400
1,500,000	534,700	304,200	304,200	608,400
2,000,000	785,300	429,200	429,200	858,400

(1) Basic exemption of \$60,000 and no gifts within three years of death.

(2) Spouse exemption of 50 p.c. of value of estate plus \$20,000 for children and no taxable gifts.

(3) Exemption of \$20,000 for children and value of the estate capital for the use of the wife remains the same.

APPENDIX "C"

Effect of the Proposed Changes
in Estate Tax
"Notes on the attached Tables"

There are four pages of tables. Pages 1A and 2A are the same as pages 1 and 2 except that they are for larger estates.

Illustration 1 (on pages 1 and 1A) shows the tax where a man dies leaving all of his assets to his widow, and then she dies leaving her estate equally amongst the children. *This is probably the most common will in small estates (including those stretching up to about \$150,000).* Under the present rules there can be two sets of estate taxes provided the size of the estate is greater than the exemptions. Under the proposed rules there can only be one estate tax and it is levied when the widow dies; this could mean a postponement of many years.

It will be noted that in this illustration the tax under the proposed law is larger than under the present law for all estates up to about \$80,000. However, these examples assume that the full amount left to the widow is passed on intact to children when she dies. In the case of smaller estates some or all of what the widow inherits is likely to be used by the widow for her maintenance during her lifetime. For example, where the amount she received was a pension or annuity it will all be used up during her lifetime. But even if from the amount she inherited, there was left \$20,000 (the basic exemption provided in the rate schedule), plus the exemptions in respect of bequests to her children, the amount shown as tax under the proposed law would be zero.

Illustration 2 (on pages 1 and 1A) shows the effect in those instances where the property is left outright.

- (a) to a stranger, and
- (b) to adult children.

Because the wife has die first there are not two sets of taxes as under the existing system. In these cases the proposed tax is less than the existing tax on all estates illustrated up to \$200,000 if there are four children, and up to \$150,000 if there are three children. Because of the change in exemptions, there are higher taxes if there are only one or two children. The general effect is fairer than at present because where there are fewer chil-

dren (and therefore larger bequests) the tax is heavier, and where there are more children (and therefore smaller bequests) the tax is lighter.

Illustration 3 (on pages 1 and 1A) deals with the type of will where all the assets are left in trust with the income going to the widow during her lifetime and the assets to the children upon her death. In this case taxes will have been increased under the proposed system but the increases are not large where there are several children and where the estate is not greater than \$200,000. Besides, the tax has been deferred from the time of the husband's death to the time of the widow's death so that widow is able to receive a greater income and has more capital available on which to encroach, if necessary.

Illustration 4 (on pages 2 and 2A) shows the effects where half of the estate was taxed at the time of the husband's death and the other half at the time of the wife's death. In this set of figures the proposed tax is lower than the present tax in all but one instance.

An important relationship brought out in the illustrations is that the proposed new taxes are identical in cases 1, 2 and 3. That is, in the three most common methods of passing on assets, the taxes under the new system will be the same, whereas they were quite different under the old system. Therefore for the great majority of Canadians who die with taxable estates (and these constitute only about 1 out of 20, the rest not being taxable at all), the new estate tax system will be neutral as between the type of will that he is likely to draw, and neutral as well as to whether his wife predeceases him or he dies first. This means that there will be far fewer anomalies under the new system than under the existing system.

In the illustrations:

- (1) "adult" children means healthy children over 25 in respect of whom the estate is eligible for a deduction of \$10,000 in these examples. (In respect of a bequest to a younger child an estate may be eligible for an additional deduction of

up to \$25,000 each, and in respect of a bequest to an incapacitated child up to \$70,000 each);

(2) the figures shown are those before any abatement in recognition of the provincial succession duties that are levied by Ontario, Quebec and British Columbia. If property included in an estate is situated, according to the rules in the Estate Tax Act, in the provinces of Ontario and Quebec the tax is reduced by 50%, or if in the province of British Columbia the tax is reduced by 75%; and

(3) it has been assumed that the widow has not used up any of the capital, and that the tax levied on the first death has been taken out of the bequests pro rata, except in the case of Illustration 4, Proposed Tax, in which all the tax on the first death is assumed to have come out of the bequests to the children. This last assumption is made to avoid a complicated calculation and it results in little or no difference from the amount of tax that would result if it were pro-rated.

ILLUSTRATIONS OF THE EFFECT OF THE ESTATE TAX CHANGES
On Estates between \$50,000 and \$100,000

	Estate of \$50,000		Estate of \$60,000		Estate of \$80,000		Estate of \$100,000	
	Present Law	Proposed Law	Present Law	Proposed Law	Present Law	Proposed Law	Present Law	Proposed Law
1. Estate left outright to the widow, and on her death equally amongst her adult children; where the number of children is:								
One.....	0	0	2,600	4,800	8,332	8,700	15,160	13,200
Two.....	0	0	"	3,000	"	6,600	"	10,800
Three.....	0	0	"	1,500	"	4,800	"	8,700
Four.....	0	0	"	0	"	3,000	"	6,600
2. Estate left outright by a widower:								
(a) to a stranger.....	0	0	2,600	5,000	6,200	10,800	10,200	15,600
(b) equally amongst his adult children; where the number of children is:								
One.....	0	0	2,600	4,800	6,200	8,700	10,200	13,200
Two.....	0	0	"	3,000	"	6,600	"	10,800
Three.....	0	0	"	1,500	"	4,800	"	8,700
Four.....	0	0	"	0	"	3,000	"	6,600
3. Estate left in trust with the income to the widow during her lifetime and the assets divided equally amongst the children on her death; where the number of children is:								
One.....	0	0	0	4,800	2,600	8,700	6,200	13,200
Two.....	0	0	0	3,000	"	6,600	"	10,800
Three.....	0	0	0	1,500	"	4,800	"	8,700
Four.....	0	0	0	0	"	3,000	"	6,600

ILLUSTRATIONS OF THE EFFECT OF THE ESTATE TAX CHANGES
On Estates between \$120,000 and \$1,000,000

	Estate of \$120,000		Estate of \$150,000		Estate of \$200,000		Estate of \$500,000		Estate of \$1,000,000	
	Present Law	Proposed Law	Present Law	Proposed Law	Present Law	Proposed Law	Present Law	Proposed Law	Present Law	Proposed Law
1. Estate left outright to the widow, and on her death equally amongst her adult children; where the number of children is:										
One.....	22,556	18,300	34,304	26,700	55,136	43,200	201,910	184,200	496,586	434,200
Two.....	"	15,600	"	23,700	"	39,700	"	179,200	"	429,200
Three.....	"	13,200	"	21,000	"	36,200	"	174,200	"	424,200
Four.....	"	10,800	"	18,300	"	32,700	"	169,200	"	419,200
2. Estate left outright by a widower:										
(a) To a stranger.....	14,600	21,000	21,400	29,700	33,600	46,700	122,900	189,200	313,900	439,200
(b) Equally amongst his adult children, where the number of children is:										
One.....	14,600	18,300	21,400	26,700	33,600	43,200	122,900	184,200	313,900	434,200
Two.....	"	15,600	"	23,700	"	39,700	"	179,200	"	429,200
Three.....	"	13,200	"	21,000	"	36,200	"	174,200	"	424,200
Four.....	"	10,800	"	18,300	"	32,700	"	169,200	"	419,200
3. Estate left in trust with the income to the widow during her lifetime and the assets divided equally amongst the children on her death; where the number of children is:										
One.....	10,200	18,300	16,800	26,700	28,600	43,200	116,300	184,200	305,300	434,200
Two.....	"	15,600	"	23,700	"	39,700	"	179,200	"	429,200
Three.....	"	13,200	"	21,000	"	36,200	"	174,200	"	424,200
Four.....	"	10,800	"	18,300	"	32,700	"	169,200	"	419,200

	Estate of \$50,000		Estate of \$60,000		Estate of \$80,000		Estate of \$100,000	
	Present Law	Proposed Law	Present Law	Proposed Law	Present Law	Proposed Law	Present Law	Proposed Law
4. Estate left outright with one-half to the widow and one-half divided equally amongst the children, and on the widow's death her estate is divided equally amongst the children; where the number of children is:								
One.....	0	0	0	0	2,600	1,500	6,200	3,000
Two.....	0	0	0	0	"	0	"	1,500
Three.....	0	0	0	0	"	0	"	0
Four.....	0	0	0	0	"	0	"	0

	Estate of \$120,000		Estate of \$150,000		Estate of \$200,000		Estate of \$500,000		Estate of \$1,000,000	
	Present Law	Proposed Law	Present Law	Proposed Law	Present Law	Proposed Law	Present Law	Proposed Law	Present Law	Proposed Law
4. Estate left outright with one-half to the widow and one-half divided equally amongst the children, and on the widow's death her estate is divided equally amongst the children; where the number of children is:										
One	11,986	9,600	20,588	15,300	35,940	26,400	147,781	125,400	380,005	368,400
Two	"	6,000	"	11,400	"	21,600	"	117,400	"	358,400
Three	"	3,000	"	7,800	"	17,400	"	109,400	"	348,400
Four	"	0	"	4,500	"	13,200	"	101,400	"	338,400

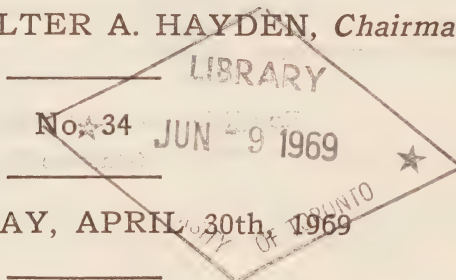


First Session—Twenty-eighth Parliament

1968-69

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE
ON
BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*



WEDNESDAY, APRIL 30th, 1969

First Proceedings on Bill S-34,

intituled:

“An Act respecting Nova Scotia Savings & Loan Company”.

WITNESSES:

Department of Insurance: R. Humphrys, Superintendent. *Nova Scotia Savings & Loan Company:* L. J. Hayes, Counsel; G. C. Piercey, President, and G. Ross Guy, General Manager and Secretary-Treasurer.

APPENDICES:

“A”—Newspaper Notice.

“B”—Financial Report.

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Leonard
Aseltine	Desruisseaux	Macnaughton
Beaubien	Gélinas	Molson
Benidickson	Giguère	Phillips (<i>Rigaud</i>)
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Isnor	Welch
Connolly (<i>Ottawa West</i>)	Kinley	White
Cook	Lang	Willis—(30)

Ex officio members: Flynn and Martin

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, April 29th, 1969:

"The Honourable Senator Urquhart presented to the Senate a Bill S-34, intituled: "An Act respecting Nova Scotia Savings & Loan Company".

The Bill was read the first time.

With leave of the Senate,

The Honourable Senator Urquhart moved, seconded by the Honourable Senator Rattenbury, that the Bill be read the second time now.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative, on division.

The Bill was then read the second time, on division.

The Honourable Senator Urquhart moved, seconded by the Honourable Senator Rattenbury, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.

With leave of the Senate,

The Honourable Senator Urquhart moved, seconded by the Honourable Senator Rattenbury:

That Rule 119 be suspended with respect to the Bill S-34, intituled: "An Act respecting Nova Scotia Savings & Loan Company".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, April 30th, 1969.

(37)

At 10.45 a.m. the Standing Senate Committee on Banking, Trade and Commerce proceeded to the consideration of:

Bill S-34, "An Act respecting Nova Scotia Savings & Loans Company".

Present: The Honourable Senators Hayden (Chairman), Aseltine, Beaubien, Blois, Carter, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Flynn, Gelinas, Giguère, Haig, Hollett, Isnor, Kinley, Leonard, Macnaughton, Molson, Phillips (*Rigaud*), Thorvaldson, Walker, Welch and Willis. (24)

Present, but not of the Committee: The Honourable Senators Connolly (*Halifax North*), Fergusson, Inman, Macdonald (*Cape Breton*), Smith and Urquhart. (6)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The following witnesses were heard:

Department of Insurance:

R. Humphrys, Superintendent.

Nova Scotia Savings & Loan Company:

L. J. Hayes, Counsel.

G. C. Piercey, President.

G. Ross Guy, General Manager and Secretary-Treasurer.

It was *Agreed* that the newspaper notice of the application to Parliament and the Financial Statement of the Company be printed as Appendices "A" and "B" to these proceedings.

It was *Moved* that the Bill be now reported without amendment.

The question being put, the Committee divided as follows:

YEAS—5 NAYS—7

The *Motion* was declared *lost*.

Upon motion it was *Resolved* that further consideration of the Bill be deferred to a later date.

At 11.45 a.m. the Committee proceeded to the next order of business.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

THE STANDING COMMITTEE ON BANKING, TRADE AND COMMERCE

EVIDENCE

Ottawa, Wednesday, April 30, 1969.

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-34, respecting Nova Scotia Savings & Loan Company, met this day at 11.15 a.m. to give consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have a complementary bill, S-34, which is before you. Mr. Humphrys again will be the number one witness. May I have a motion for printing, duly moved and seconded?

Upon motion, it was *resolved* that a verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 copies in French be printed.

Mr. R. Humphrys (*Superintendent of Insurance*): Mr. Chairman and honourable senators, this bill proposes that there be an amendment to the act of incorporation of the Nova Scotia Savings & Loan Company. The Nova Scotia Savings & Loan Company is a very old mortgage loan company. It was established in Nova Scotia in the 1840's. It was formed as a provincial association and operated as such for many years. It has been under the supervision of the federal Department of Insurance by agreement with the Government of Nova Scotia, and the company operated as a provincial company until 1964. At that time it sought a special Act of Parliament creating a federal loan company and effected a merger of the new federal loan company with the provincial company, thus having the effect of transferring the old savings and loan association into a new federally incorporated mortgage loan company.

The company now operates under its charter, being a special Act of Parliament passed in 1964. It is a well-established Maritime institution having assets of about \$58 million at the end of 1968.

Senator Thorvaldson: Are those the sole assets or assets under administration?

Mr. Humphrys: These are its own assets. This is a mortgage loan company and not a trust company. It raises its money by the sale of debentures and by the acceptance of deposits from the public. The outstanding debentures amounted to \$46 million at the end of the year, and saving deposits amounted to about \$6.5 million. The company is in sound financial condition and most of its assets consist of mortgage loans to the total of \$58 million of assets. Fifty-six million dollars is in mortgage loans in the Maritimes.

This bill proposes an amendment to the company's charter that will have the effect of restricting the number of shares that can be registered in the name of any shareholder to a maximum of 15 per cent of the outstanding stock of the company, and it provides that if any shareholder acquires, together with associates—and the description of the associates is in the bill—beneficial ownership of more than 15 per cent of the stock then he will lose all voting rights.

My role here is really to explain what the bill will do. I think the justification for the bill must come from representatives of the company themselves. From the point of view of the department and our responsibilities as supervisors, I do not believe that a restriction in ownership of stock of this type would operate to the detriment of the debenture holders or the depositors. It is, therefore, as I see it, a matter for the shareholders of the company to determine if they wish to have such a restriction on the transfer and ownership and voting rights of the shares of their company. From the point of view of the supervisor I do not see that there is anything in the public interest, looking at our responsibilities for the welfare of the depositors and debenture holders, that would be objectionable.

There were two points that I thought were important from a supervisor's point of view.

One was that the legislation should not take away rights that anyone had at the time that notice was given of the proposal, and also that it should not bar the way to any take-over of the company that might be necessary to provide for the welfare of the debenture holders and the depositors. For example, if the company got into financial difficulties—and the only way to solve this situation is really to have another company take it over—I thought that the way should not be barred for that transaction. There is a provision in this bill that leaves the way open for a particular offer under definite circumstances.

Senator Walker: What section is that?

Mr. Humphrys: This is the last provision in the bill, clause 19. It provides that any restrictions on the transfer of shares or the voting rights will not act to prevent an offer and purchase of the shares if the offer is made pursuant to the Loan Companies Act and subject to the provisions in that act.

Those provisions are that a federally incorporated loan company can make an offer for shares of another loan company provided that it has acceptance of the offer by at least 67 per cent of the shares and that the purchase is approved by the Treasury Board. This saving provision removes the restrictions on the transfer of shares if the offer is made in accordance with that provision and if the Minister of Finance is satisfied that the take-over of the company in this way is justified on the grounds of protection of the debenture holders, namely, the depositors.

The only other comment, Mr. Chairman, is that the wording of the bill is substantially, almost identically the wording in the Loan Companies Act; but the wording in the Loan Companies Act is for the purpose of putting a restriction on the transfer of shares to non-residents and restrictions on voting rights of non-residents. Consequently, the wording of this bill was copied, in so far as appropriate, from the wording in the Loan Companies Act.

Senator Beaubien (Bedford): What is the capital structure? How many shares are outstanding? Are these common shares?

Mr. Humphrys: There are only common shares. The authorized capital is \$2,500,000 in shares at \$2 each. The issues have been \$1,694,000, which, at \$2 a share would mean 847,000 shares.

This proposal was put before a special general meeting of the shareholders of the company and, as indicated in the debate in the

Senate, if my figures are correct, 91 per cent of the shares were represented at the meeting and this proposed legislation was approved by 84 per cent of them.

Senator Beaubien (Bedford): What is the last selling price of the shares? What is the price they were selling at?

Mr. Humphrys: Perhaps Mr. Piercey could answer that.

Mr. G. C. Piercey, President, Nova Scotia Savings & Loan Company): The price of the shares, senator, has been trading at \$8, prior to the proposal that was made a few months ago by a particular company attempting to acquire the shares.

Senator Walker: What precedents, Mr. Superintendent, have we for this limitation upon shareholders, of 15 per cent?

Mr. Humphrys: I know of no precedent in the charter of any federal company. The only corresponding move that I know of, that has been made in the charter of the company, is an amendment that was made to the charter of the Royal Trust Company by the legislature in Quebec, in 1967, I think, which put a limitation on voting rights as respects shares of that company. It provided that no shareholder could vote more than 10 per cent of the shares of the company. I know of no precedent here.

The Chairman: You do have limitations approaching from the other side, that is, limitations on intending purchases, to the extent to which they may acquire holdings.

Mr. Humphrys: That is only as respects non-residents, for life insurance companies, mortgage companies and loan and trust companies. In the bank Act there is a limitation both on voting rights and transfer so that no one shareholder can own more than 10 per cent of the shares of a chartered bank.

Senator Cook: I understood Mr. Piercey to say that the price was \$8 prior to an offer being made. What was the offer?

Mr. Piercey: The offer was \$10, senator.

Senator Cook: For how many?

Mr. Piercey: For as many as they could get at the time, senator.

The Chairman: Are there any other questions?

Senator Beaubien (Bedford): I would like to know who the directors and how many shares they hold?

Mr. Piercey: The chairman and directors own in their own right approximately 7 per cent of the shares of the company. All are Nova Scotians, businessmen, professional men.

Senator Flynn: I wonder about shareholders who object to the presentation of this bill, whether an opportunity was given to them to give their views, or has any offer been made to them?

Mr. Piercey: The only shareholder who objected was the representative of the shareholders that had been attempting to acquire the shares, for which this legislation was provided—with one other objection.

Senator Flynn: Did they offer to sell their shares, if the majority was in favour of this legislation?

Mr. Piercey: An offer that was made was not a general offer it was an offer that was made to purchase the largest groups—the shareholders only in the largest groups, at the time, at the annual meeting. Of course, this information was made known to all the shareholders, that this offer had been made in certain instances, and there was no reason for the other shareholders to think that they could not accept and have their shares purchased at the same offer.

Senator Flynn: Is there anybody here today representing this minority group?

The Chairman: Not that we are aware of.

Senator Leonard: Might I ask Mr. Humphrys about clause 18.

Insofar as the provisions of sections 15, 16 and 17 of this Act are inconsistent with the provisions of section 56 of the *Loan Companies Act*, the provisions of this Act shall prevail.

What inconsistency is there? What is the effect on the clause?

Mr. Humphrys: By reason of the fact that this bill modifies or may modify voting rights and may modify the provisions on transfer of shares. It is to remove any conflict. The general act says that each shareholder has one right per share. This was put in to avoid a conflict concerning the general provisions of the act regarding the procedure on transfer of shares.

Senator Cook: If 80 per cent of the shareholders want to sell, why do you want this legislation?

Senator Beaubien (Bedford): That is what I said last night in the Senate. They do not have to sell.

Mr. Piercey: The shareholders who may represent 84 per cent today and voting against this are not necessarily going to be the shareholders tomorrow. We have a lot of these shares passing on in recent times and it is our concern that some of these are held in very large blocks, and we feel this is a very essential part of the bill.

Senator Cook: This legislation would bind future shareholders, shareholders in the future, who may want to change their minds.

The Chairman: I understood you to say, Mr. Piercey, that 84 per cent of the shareholders present at the meeting voted for this legislation.

Senator Beaubien (Bedford): Was that the total number?

Mr. Piercey: Eighty-four per cent of those present—that means 86 per cent of the outstanding shares of the company.

Senator Beaubien (Bedford): You say there are changes in the stockholders, and so on. The shareholders who now are there may change and in a month's time 84 per cent may want to sell. I do not know where this bill is leading us. It is a bad precedent.

The Chairman: I do not know whether we can speculate. I think we have to deal with the situation as we have it.

Senator Beaubien (Bedford): Mr. Piercey was saying there may be a change. Perhaps the majority might be in favour of selling later on. It may be those who would change.

The Chairman: They might.

Senator Molson: Is there not a danger that a group, perhaps not a group of directors—they have not been named and I assume they are all splendid people—but a group amongst them controlling this company from any given date and being unable to be budged, to be moved, by the fact that no one can get a larger vote, that no one can vote more than the 15 per cent? Presumably if a small group acquired amongst themselves a substantial holding, that party could perpetuate them-

selves and there would be no way of assuming the power to get rid of them. Is that not so?

The Chairman: They only represent 7 per cent, as I understood Mr. Piercey to say.

Senator Molson: But tomorrow they may represent 70 per cent.

Senator Thorvaldson: Or only 2 per cent.

Senator Molson: Yes. They might each have 10 per cent; they might each have 7 per cent.

The Chairman: Senator, if we start speculating as a basis of what we are going to do with the facts as we have them before us or as to what the possibilities are...

Senator Molson: This is quite a new principle before us and I think we should speculate to some extent, Mr. Chairman, to see if there are any booby traps or dangers in this as a principle.

The Chairman: I think Mr. Humphrys might answer that. What, if anything, does he see from his point of view?

Mr. Humphrys: Mr. Chairman, from our point of view, I did not think in respect of this kind of rule these restrictions would deliver the company into the hands of the directors, which I think is the possibility Senator Molson has in mind.

The restriction applies only at the 15 per cent level. Even now, without this restriction, I think that if anyone got 30 per cent of the stock he would probably have a dominant interest because there is only one large block at the present time. The way is still open, even with such restrictions, for shareholders to give their proxies to anyone they want to give them to, so that one person could gather together proxies for 50, 60 or 70 per cent of the votes to vote at a particular meeting, if he were not satisfied with what the directors were doing and wanted to change the board.

What this will do is prevent any one person acquiring more than 15 per cent in his own right and it will prevent, really, a takeover of the company by another company which is, as I understand it, the principal motive that the shareholders had in mind in seeking this legislation.

As I say, I think it is for them to justify the case. If this is the way the shareholders want it and if it is not being delivered into the hands of a small group irrevocably and if the interests of the debenture holders and

depositors are not being threatened, I do not feel that I should object to it.

I do not want to be in the position of arguing for it or against it.

Senator Molson: I think we are getting the message, actually, Mr. Humphrys.

Senator Leonard: May I ask you, Mr. Humphrys, whether copies of all proceedings are on file with you—the notice calling the meeting, the material submitted to shareholders' meetings and proceeding of the meetings themselves? Are these things on file?

Mr. Humphrys: Yes, senator, we have seen all these documents.

Senator Desruisseaux: Mr. Chairman, I would like to know how many shareholders they have presently and what the book value was when the market value was \$8.

Mr. Ross Guy, General Manager and Secretary-Treasurer, Nova Scotia Savings and Loan Company: There were 712 shareholders of the company at the time of the annual meeting. Very few of them live outside the province. The shareholders' equity is approximately \$4,800,000.

Senator Desruisseaux: I meant per share.

Mr. Guy: That is \$5.65 per share, in round figures.

Senator Desruisseaux: Was consideration ever given to changing that company by incorporating it, in view of this situation? Making it a one-man-one-vote company?

Mr. Guy: Actually, you know, in 1964 we came to this very room with Mr. MacGregor, the Superintendent of Insurance at that time, and we switched the company over to a federal loan company. That was done at the request of the shareholders at that time, who represented 75 or 80 per cent of the shares.

Senator Thorvaldson: Have minority shareholders been given any notice of either this bill or this meeting?

Mr. Guy: Mr. Chairman, their solicitor was in attendance at the meeting. He was given notice then and notice was published in the *Canada Gazette*. Copies of the proposed legislation were handed out at the meeting.

Senator Thorvaldson: Could we have the letter calling the shareholders' meeting read into the record? Is it available?

Senator Leonard: While Mr. Humphrys is looking that up, may I say that I understand that the Royal Trust Company are pretty close to the 15 per cent figure now. Suppose a shareholder dies, having appointed the Royal Trust Company as executor of his estate. What happens to the application for transfer?

Mr. Hayes: They would have to have it registered, I understand, senator; it would be a matter of perhaps registering in the name of a nominee. Perhaps Mr. Humphrys could explain what happens in the case of federal legislation, general legislation with respect to those situations.

Senator Leonard: This is not a question of a nominee. This is a question of appointing the trust company as executor. They must, therefore, put shares in his name or put it under his control in some way or other. Does this legislation enable the executors to prevent that transfer?

The Chairman: Enable the "executors", did you say?

Senator Leonard: Yes, the executors of the estate, assuming the Royal Trust Company would then go over 15 per cent of the shares.

Senator Beaubien: The trust company would have no beneficial interests.

Senator Flynn: They would have control of the voting rights, but would not own them.

The Chairman: We are waiting for the answer to Senator Leonard's question.

Mr. Humphrys: As I interpret this bill, Mr. Chairman, honourable senators, it would prevent the directors from approving a transfer to a trust company, if the result would be that the shares registered in the name of that trust company would exceed 15 per cent.

The lawyers may correct me on this, but I think that that would apply whether the trust company had the shares registered in its own name as the beneficial owner or whether they were registered as trustee or as nominee.

Senator Leonard: The answer is, then, that they could not be registered in the name of the Royal Trust Company, if they were to go beyond 15 per cent, whether the Royal Trust Company were acting in a fiduciary capacity or not.

Mr. Humphrys: That is my interpretation of the wording of the legislation, senator.

Senator Gélinas: Mr. Chairman, if an individual presently owns 15 per cent of the shares and inherits 1 or 2 per cent more, what happens when he does get those shares? Would they be transferred to his name?

Mr. Humphrys: As I interpret the legislation, they could not be transferred.

Senator Gélinas: What does he do, dispose of them?

Mr. Humphrys: He disposes of them. On the other hand he could have them registered in the name of a nominee holding for him, and I think that would be the course he would adopt. They could be registered in the name of the nominee holding for him. But this bill provides that if there are shares registered in the name of any person or held by or for the benefit of any individual and associates and if they exceed 15 per cent, then they cannot be voted. So those shares held by the nominee, if they were part of a package or one person had a beneficial interest in more than 15 per cent, could not be voted.

Senator Beaubien: I asked for the names of the directors and how many shares each owned, and I think we should have that information.

Mr. Guy: I can give the information regarding the names but I cannot give the information regarding the shares. There is Mr. Walter W. Barss, Chairman of the Board; Mr. George C. Piercey, Q.C., President; Samuel S. Jacobson, Vice-President; Donald McInnes, Q.C.; A. R. Harrington, Doctor of Engineering; L. R. Shaw; M. S. Grant. As I say I cannot answer the question regarding the shares. As Mr. Piercey has already said they own roughly 7 per cent of the stock.

Senator Desruisseaux: Are they equally spread among the directors?

Mr. Guy: Yes they are. It may be that some directors only have qualifying shares.

Senator Beaubien: Can you tell us who the very large shareholder is that was mentioned?

Mr. Guy: There is one shareholder Mr. McInnes who is senior shareholder on the board.

Senator Desruisseaux: Do you know approximately the number of shares he would have?

Mr. Guy: No.

Mr. Humphrys: At the end of 1967 the information I have before me showed that 20,000 shares were in the name of Mr. D. McInnes.

Mr. Guy: And there is no change.

Senator Leonard: Is the stock listed on the exchange?

Mr. Ross: No, sir.

Senator Thorvaldson: Someone was going to produce the letter to the shareholders.

Mr. Hayes: I am sorry, I did not bring it with me. I thought I had it among my papers, but I do not. I am sorry, senator.

Mr. Humphrys: I have a copy on my file of the newspaper notice calling the meeting and as I recall the letter was similar. The information in the letter that went to each shareholder was similar to the information in the notice.

The Chairman: What Mr. Humphrys has from the newspaper notice Mr. Hayes says was exactly the same in form and content as the notice that went to shareholders.

Senator Thorvaldson: If this bill is going to be passed it should be examined to see that it was the same in tone and content.

The Chairman: Do you want it read or appended to the proceedings?

Senator Thorvaldson: Appended to the proceedings.

(For copy of newspaper notice see Appendix "A")

The Chairman: Is that agreed?

Hon. Senators: Agreed.

Senator Leonard: I would suggest that we do not come to a conclusion on this matter today. This subject was only raised last evening and that was the first knowledge we had of it and special leave was given to have this hearing today because the officials coming from Halifax were having difficulties about transportation. But this is a precedent and I do not like the precedent at all. I have nothing against the company. In fact all that I know of it is in its favour, but I do not like the principle of a precedent being established here and I think we should take our time and consider it thoroughly before reaching a conclusion.

The Chairman: Before coming to the point Senator Leonard has made, are there any other questions you want to ask of any of the witnesses here? If not we can deal with Senator Leonard's question as to whether we should proceed to make a decision and report the bill at this time or whether having heard all the evidence we should adjourn for consideration of what we have heard.

Senator Kinley: We have not heard the promoters of the bill.

The Chairman: They have all been up at different times.

Senator Flynn: What is the suggestion of Senator Leonard?

Senator Leonard: That we adjourn further consideration until next week.

Mr. Piercey: Mr. Chairman, I have a statement . .

Senator Thorvaldson: I suggest that Mr. Piercey should come up to the table to speak. It is difficult to hear him when he is speaking back there.

Mr. Piercey: Mr. Chairman, I have a statement to make and I will be brief. First of all I would like to thank very sincerely on behalf of the officers of the company the committee for having brought this matter to this stage and for having waived by consent the seven day rule. I may say that if this had not been done we could not have been here next week because transportation arrangements are impossible. We could get no reservations for next week either by air or by train. In fact we do not know how we are going to get home.

Senator Connolly (Ottawa West): Why not stay in Ottawa? It is a nice place.

The Chairman: I think you could probably get to like Ottawa very much.

Mr. Piercey: I am sure we could. In fact what we thought were reservations were not reservations at all.

Now, Mr. Chairman, the comment was made that the purpose of this bill is primarily to prevent a takeover. That should be qualified, and this may sound hollow, but I say in all sincerity that the primary purpose of this bill is not simply to prevent a takeover but to prevent something happening to the Province of Nova Scotia that should not be happening and this applies also to parts of

the Province of New Brunswick. Without any doubt this company which is 125 years old is providing a unique service that no other company whether national or local can perform. We have statistics and figures from the registry of deeds of the Province of Nova Scotia to prove this. This company, not through any personal work of mine or the officers today, has qualified as the leading local company and lending institution in our area. Other companies have their own policies and we respect them.

Our policies have always been to go out into rural areas where there are no central water and sewerage services necessarily. We do not make this a prohibition, or the services a requirement, but national companies do, for the most part, and our figures show we are unquestionably the leader in the rural areas of Nova Scotia and in parts of New Brunswick in the small mortgage lending field. Last year we loaned on 2,200 housing units represented by some 1,200 mortgage applications. The growth of this company during the last five years has been startling because of the housing situation and the crisis that has occurred, and the demand is there and we are trying to do our part in answering it. We know that a national company acquiring our company would, without any question, discontinue most of those policies.

Senator Beaubien: If your company is making money with these policies you have had all these years, why would new management change your way of doing business?

Mr. Piercey: Because another company acquiring this company would probably use that money to better advantage elsewhere in this country.

Senator Beaubien: What are you getting by way of return on your mortgages?

Mr. Piercey: We try to get 2 per cent above our cost rate.

Senator Desruisseaux: What does it represent; what is the interest rate?

Mr. Piercey: It varies, but the prime rate at the moment is 9-1/2 per cent.

Senator Desruisseaux: Plus 2 per cent.

Mr. Piercey: No. We get 9-1/2 per cent, and we are paying a little over 8 per cent for our money.

Senator Thorvaldson: That is pretty much standard, is it not?

Senator Kinley: You are offering at a greater rate for your money than any other company in Nova Scotia.

Mr. Piercey: No, senator.

Senator Kinley: You are offering at how much?

Mr. Piercey: Our prime rate is 9-1/2 per cent and our going rate is 9-3/4 per cent.

Senator Kinley: How much are you paying?

Mr. Piercey: Just over 8 per cent.

Senator Walker: I would like to hear Mr. Piercey finish his statement. He is entitled to, as is any other witness.

Mr. Piercey: I feel very strongly that this service we are trying to perform is vital to our province. If it were to be curtailed or cut short this would certainly work to the disadvantage of the province because the housing situation in Nova Scotia today is serious—just as I am sure it is serious in other parts of the country—but we feel these policies should be continued.

Some of our local legislators are very concerned about what might happen if a take-over should occur, and although we are a Nova Scotia company we do lend in very large areas of the neighbouring province of New Brunswick as well.

Mr. Guy wanted to correct me on the cost of our money. He shook his head, but I know what he means. I said "just over 8 per cent". Our debentures are 7-3/4 per cent, but when all the costs are added together it comes very close to 8 per cent.

Do you have any other questions, honourable senators?

Senator Flynn: Do you see any inconvenience if we were to postpone consideration of this bill until next week, to see whether anybody from the minority group would like to come and raise objections here? Perhaps they will not come, but I think they should be given the opportunity.

Mr. Piercey: I do not see how much more notice anybody could have had. We have done everything possible to publicize it and everything within the law, and at our annual meeting we made sure that the dissidents knew the whole contents and purport of the bill. If they are not objecting to it today, I do not think they ever will. However, I have to leave that in your hands.

Senator Beaubien: There are other companies making loans in your part of the world. What do they charge?

Mr. Piercey: The rates are competitive, senator, definitely.

Senator Beaubien: Other people are lending money at 9-1/2 or 9-3/4 per cent?

Mr. Piercey: That is correct.

Senator Beaubien: Why do you say that if anybody else took over your company they would not service the same people in the same way?

The Chairman: That is merely an opinion that he has expressed. He is entitled to it, but whether we accept it or not is another question.

Mr. Piercey: They are just not doing it. And why are they going to change?

Senator Walker: One of the points you are making is that you and one other company are the only native conventional loan companies?

Mr. Piercey: That is correct.

Senator Desruisseaux: When making mortgage loans is there an accommodation charge of some sort?

Mr. Piercey: There is no other charge at all.

Senator Desruisseaux: Do you take deposits?

Mr. Piercey: Yes, we do take deposits.

Senator Desruisseaux: Have financial reports been filed?

Mr. Piercey: They are filed constantly; they have to be.

Senator Desruisseaux: Would it be of any use to the senators here, Mr. Chairman, if we had the financial reports?

The Chairman: For the last year?

Senator Desruisseaux: Yes.

The Chairman: Will you produce a copy, so that we can append it to the proceedings today?

Mr. Piercey: Yes.

(For copy of Financial Report see Appendix "B")

Senator Leonard: How many shares are involved?

Mr. Piercey: There are 840,000 shares outstanding.

Senator Leonard: The largest shareholder apart from the Royal Trust Company, is Mr. McInnes?

Mr. Piercey: That is correct.

Senator Leonard: With 20,000 shares?

Mr. Piercey: Yes.

The Chairman: Are there any other questions?

Senator Connolly (Ottawa West): Suppose, for the sake of argument—and I hope it does not happen, because the case you have made is a very good one—that the committee does not feel you should have this bill, could you incorporate in Nova Scotia and continue the policies that this company has applied?

Mr. Piercey: Could we incorporate in Nova Scotia?

Senator Connolly (Ottawa West): Yes.

Mr. Piercey: I believe we could under the Provincial Loan Companies Act. However, we would hesitate doing that.

Senator Connolly (Ottawa West): You would prefer to be a federal company?

Mr. Piercey: Definitely, we would prefer to be a federal company.

Senator Connolly (Ottawa West): Senator Isnor tells me you changed from a federal to a provincial company and went the other way in 1964.

Mr. Piercey: That is correct.

Senator Thorvaldson: I think you understand there is a tremendous amount of sympathy for you in this committee, and quite naturally so, because many of us do not like these take-overs of smaller institutions by these national institutions; and I think most of the people here will want to do everything in the world for you.

However, we are up against the problem of precedents that might become onerous and difficult and present a bad picture. Consequently, I wonder if I might ask you a few questions in regard to the method that has been followed by this company—which we all understand to be the Royal Trust Company—

since your stock is not listed on the stock exchange, to acquire shares in your company. Have they made individual solicitations to shareholders, or have they written letters to shareholders, or have they made a general offer to all the shareholders?

Mr. Piercey: They have not made a general offer to all the shareholders. A particular broker—and I think one particular broker, but it may be more than one—who had access to our shareholders' list—and it is easy to get—went to those owning the largest blocks of shares—and they were larger than Mr. McInnes, substantially larger at that time—and they acquired those blocks of shares, and that is what started this thing off, and it brought them to 14 per cent almost immediately.

Senator Thorvaldson: Have there been any official communications between that company and yourself as president of your company?

Mr. Piercey: Unofficially, . . .

Senator Thorvaldson: Either officially or unofficially.

Mr. Piercey: On a personal basis between the chief executive officer of that company and one of our directors, who was a personal friend, there has been communication. It was very friendly and the question was asked very bluntly and the answer came back generally, "There is no present intention of the shareholders, but circumstances may change in the future." This is definitely the purport of the answer.

Senator Thorvaldson: In other words, they probably contemplated acquiring a number of shares first and then making a general offer to the shareholders?

Mr. Piercey: This is what we felt was a very, very real probability.

The Chairman: Honourable senators, Senator Beaubien asked a question as to the particular holdings of the directors. I now have this information, and I will read it out if you still want it.

Senator Beaubien: Yes.

The Chairman: Mr. Barss, 12,595 shares; Mr. Piercey, 10,000 shares; Mr. Jacobson, 5,100 shares; Mr. McInnes, 20,150 shares; Mr. Shaw, 1,250 shares; Mr. Grant, 3,453 shares; and Mr. Harrington, 1,250 shares, which makes a total of 53,798 shares.

Senator Connolly (Ottawa West): Out of a total issue of . . .

Senator Molson: Of 847,000.

The Chairman: If there are no other questions we have to decide what disposition we shall make of the bill. Shall we report the bill now, or shall we adjourn the matter for further consideration at the next meeting of the committee?

Senator Beaubien: We should adjourn.

The Chairman: Will all those in favour of adjourning for further consideration please raise their hands?

Senator Thorvaldson: Before you put this vote, Mr. Chairman, I should like to ask Mr. Piercey if he can suggest any alternative, or if any member of the committee has any alternative to suggest, that would make it unnecessary for Parliament to legislate such a precedent. I do not know where we will go if we legislate in respect of companies in this way. I say this despite the fact that I am in complete sympathy with the directors of the companies in their wishing to retain this company as a provincial institution.

The Chairman: Senator, anything that involves the amendment of their charter under the present state of the law must come to Parliament.

Senator Thorvaldson: Yes, and I am wondering if it is possible to make some arrangement which would not involve an amendment of their charter.

The Chairman: I do not know.

Mr. Humphrys: Not without amending the general legislation.

Senator Thorvaldson: Perhaps it might not be a bad idea to consider amending the general legislation in regard to trust companies in the same way as the legislation in regard to banks has been amended. Personally I can see the point of such a move.

The Chairman: In the meantime we have to work with the tools that are available.

Senator Beaubien: Before you put the question, Mr. Chairman, I would like to say that if this bill is passed and a man wants to sell his shares he will get only \$8 for them. If the bill is not passed then he will get \$10. It seems to me to be terribly wrong to legislate against a man being able to sell his shares in

the best market. If the Royal Trust wants to pay \$10, and the best price outside is \$8, then why should we decide that a man has to take the \$8?

The Chairman: We are not making that decision.

Senator Beaubien: We are, in a sense, because we are eliminating a buyer.

Mr. Piercey: The shares are still trading over the counter.

Senator Desruisseaux: How many shares have been acquired so far by this trust company?

Mr. Guy: Approximately 120,000.

Senator Desruisseaux: Are they being forced to sell their shares?

Mr. Guy: No, they are not being forced to sell any shares. They are only at 14.3 per cent, and we are suggesting 15 per cent.

The Chairman: Do we adjourn for further consideration at the next meeting of the committee?

Senator Kinley: Mr. Chairman, have we satisfied the people who have come here? Have they said all that they want to say in regard to this bill?

The Chairman: I assume so. I have asked them, and I have asked the members of the committee, if they have anything more to say. Have you anything further to say, Mr. Piercey?

Mr. Piercey: No, I have nothing further to say.

The Chairman: Have you anything further to say, Mr. Hayes?

Mr. Hayes: No, Mr. Chairman.

The Chairman: Have you anything further to add, Mr. Guy?

Mr. Guy: No, Mr. Chairman.

The Chairman: Have you anything further, Senator Urquhart?

Senator Urquhart: No, Mr. Chairman.

The Chairman: I do not think Mr. Humphrys has anything more to say. So, are you ready for the question?

Senator Aseltine: There might be others who want to be heard.

The Chairman: There are not any others here. I take it that there is no person present today who wants to make a representation in respect of Bill S-34. Is that right?

Senator Isnor: To bring this thing to a head, Mr. Chairman, I move we now report the bill that is before us.

The Chairman: There is a motion that we now report the bill without amendment. Are you ready for the question? Those in favour will raise their hands? Those opposed will raise their hands. The result of the voting is 7 to 5 against. The motion to now report the bill without amendment is not carried at this time.

Is there a motion—

Senator Leonard: I move that we adjourn for further consideration of this bill.

Senator Isnor: What was the result of the vote?

The Chairman: Seven to five.

Senator Isnor: In favour of now reporting the bill?

The Chairman: In favour of not now reporting the bill.

Senator Thorvaldson: There was a prior motion that we adjourn this matter for further consideration. I think we should adjourn the matter. We are not defeating the bill. We are just adjourning our consideration for a week.

The Chairman: I am trying to put that motion now. The only thing we can do is adjourn or terminate our proceedings.

Senator Molson: We do not want to turn this bill down, but I do not think there was any real notice given of this meeting today. It has been our policy to give reasonable notice of committee meetings. We are considering this bill today because of transportation difficulties, and I think that is all the more reason why we should adjourn our consideration of it.

The Chairman: That is what I am asking for. Is there a motion that we adjourn our consideration of this bill until next week? What is the feeling of the committee on that?

Senator Leonard: I move that we adjourn consideration until next week.

The Chairman: Those in favour? Those contrary? The motion is carried.

Whereupon the committee proceeded to the next order of business.

APPENDIX "A"

Copy of newspaper notice.

NOVA SCOTIA SAVINGS & LOAN COMPANY

NOTICE is hereby given that an application will be made to the Parliament of Canada at the present, the next or the following ensuing session thereof by Nova Scotia Savings & Loan Company for an Act to amend Chapter 72 of the Statutes of Canada, 1964-5, being an Act to incorporate Nova Scotia Savings & Loan Company, for the following objects:

1. To require the Directors of the Company, on and after the prescribed day, to refuse to allow in the books of the Company the entry of a transfer of any share of the capital stock of the Company to any individual, corporation or trust,

(a) when the total number of shares of the capital stock of the Company held by such individual, corporation or trust and by any other shareholder or shareholders associated with such individual, corporation or trust, if any, exceeds fifteen percent of the total number of issued and outstanding shares of such stock; or

(b) if, when the total number of shares of the capital stock of the Company held by the individual, corporation or trust and by any other shareholder or shareholders associated with such individual, corporation or trust, if any, if fifteen percent or less of the total number of issued and outstanding shares of such stock, the entry of the transfer would cause the number of such shares of stock held by the individual corporation or trust and by any other shareholder or shareholders associated with such individual corporation or trust, if any, to exceed fifteen percent of the issued and outstanding shares of such stock.

2. To prohibit the Directors of the Company, on and after the prescribed day, from allotting or permitting the allotment of any shares of the capital stock of the Company to any individual, corporation or trust in circumstances where, if the allotment to such individual, corporation or trust were a transfer of those shares, the entry thereof in the books of the Company would be required to be refused by the Directors.

3. To prohibit, on and after the prescribed day, the exercise of the voting

rights attached to shares in the Company held in the name of or for the use or benefit of an individual, corporation or trust, if the total of such shares so held, together with such shares held in the name of or right of or for the use or benefit of associates of the individual, corporation or trust, exceed in number fifteen percent of the issued and outstanding shares in the Company; provided, however, that where the number of shares of the capital stock of the Company, if any, held at the commencement of the prescribed day in the name or right of or for the use or benefit of an individual, corporation or trust, together with the number of such shares, if any, held at the commencement of that day in the name or right of or for the use or benefit of any associates of the individual, corporation or trust exceed fifteen percent of the number of shares of such stock at the time issued and outstanding, the voting rights pertaining to the shares held in the name or right of or for the use or benefit of the individual, corporation or trust may be exercised in person or by proxy so long as the percentage of the shares held by or for the individual, corporation or trust does not exceed either the percentage of such shares held by or for the individual, corporation or trust and associates at the commencement of the prescribed day or the smallest percentage of such shares held by or for the individual, corporation or trust and associates on any subsequent day.

4. To authorize the Directors of the Company to make such by-laws as they deem necessary to carry out the objects set forth in paragraphs 1 to 3 of this Notice.

In this Notice

(a) "corporation" includes a body corporate, an association, partnership or other organization;

(b) "prescribed day" means the day following the day on which this Notice is first published in the Canada Gazette;

(c) a shareholder is deemed to be associated with another shareholder if

- (i) one shareholder is a corporation of which the other shareholder is an officer or director;
 - (ii) one shareholder is a partnership of which the other shareholder is a partner;
 - (iii) one shareholder is a corporation that is controlled directly or indirectly by the other shareholder;
 - (iv) both shareholders are corporations and one shareholder is controlled directly or indirectly by the same individual or corporation that controls directly or indirectly the other shareholder;
 - (v) both shareholders are members of a voting trust where the trust relates to shares of the Company; or
 - (vi) both shareholders are associated within the meaning of paragraphs (i) to (v) with the same shareholder.
- (d) "associates of the individual, corporation or trust" means, with reference to any particular day,

(i) any shareholder associated with the individual, corporation or trust on that day, and

(ii) any persons who would be deemed to be shareholders associated with the individual, corporation or trust on that day were such persons and the individual, corporation or trust themselves shareholders.

(e) "shares held by or for the individual, corporation or trust" means, with reference to any particular day, the aggregate number of shares held on that day in the name or right of or for the use or benefit of the individual, corporation or trust and associates of the individual, corporation or trust on that day.

Dated at Halifax, in the Province of Nova Scotia, this 14th day of March, A.D. 1969.

McInnes, Cooper & Robertson
Solicitors for the Applicant

1673 Bedford Row,
Halifax, Nova Scotia.

APPENDIX "B"
119th
ANNUAL REPORT
1968
NOVA SCOTIA SAVINGS
& LOAN COMPANY

BOARD OF DIRECTORS

Walter deW. Barss, Q.C.—Chairman
George C. Piercey, Q.C.—President
Samuel S. Jacobson, B.Com., M.B.A.
(Harv.)—Vice-President
Donald McInnes, Q.C., LL.D., D.C.L.
A. Russell Harrington, B.E., D.Eng., P. Eng.
Lloyd R. Shaw, B.A., M.A.
MacCallum S. Grant

EXECUTIVE

G. Ross Guy, M.C.—General Manager and
Secretary-Treasurer
W. Bruce Graham—Assistant Manager
W. L. Flinn—Chief Inspector
Miss P. E. Helms—Assistant Secretary
K. L. Mallory—Mortgage Officer
H. W. Jones—Branch Manager, Dartmouth
C. M. G. Blois—Branch Manager, Saint John
A. F. Henderson—Branch Manager, New
Glasgow

BANKERS

The Bank of Nova Scotia
The Royal Bank of Canada
Member Canada Deposit Insurance Corporation

DIRECTORS' REPORT**TO THE SHAREHOLDERS**

It is gratifying for the Directors to present the 119th Annual Report of Nova Scotia Savings & Loan Company. The year ended December 31, 1968, was the best in the long history of the Company. Profit before taxes was \$996,790, an increase of 19.1% over 1967. Our mortgage portfolio had reached \$55,599,734, an increase of \$8,800,000, or 18.8% over the previous year. Total assets increased by 18.7% and at December 31, 1968, amounted to just under fifty-eight millions of dollars. Despite unprecedented competition from the chartered banks and other financial institutions, the investing public indicated their confidence in the Company through increased debenture purchases. At the year end the

debenture account amounted to \$45,740,000, an increase of 19.5% over 1967. The savings department was also active during the year and increased by 15.4% to \$6,521,146.

EARNINGS AND DIVIDENDS

In former years, as in the year 1968, the Company took full advantage of the tax relief available through transfers to the mortgage reserve. Under the recent announcement of the Federal Government, this reserve must be reduced from 3% to 1½% of the mortgage portfolio within ten years commencing with 1969. Therefore, your Board has set up the deferred tax liability as at December 31, 1968, and further, has restated the position of the Company as at December 31, 1967.

Net profit for 1968, after tax, was \$505,790, an increase of 15.5% over 1967. The percentage increase was down slightly from the 1967 increase of 16.7% due to the 3% surtax imposed in 1968. The net profit was equivalent to 59.7 cents per share compared to 51.7 cents in 1967. Dividends amounting to 30 cents per share were paid in 1968, on the basis of a quarterly dividend of 6 cents on January 1, April 1, July 1 and October 1, and an extra dividend of 6 cents on March 1, 1968. Total dividends paid in 1968 were \$254,123.

As already announced, the Directors have declared an extra dividend of 7 cents per share payable March 1, 1969 to shareholders of record on February 17, 1969. The regular quarterly dividend has been increased from 6 cents to 7 cents commencing with the dividend payable April 1, 1969.

MORTGAGES

Interest rates, which had reached record highs in 1967, rose even higher in 1968. By the end of the year new debentures and renewals, maturing in five years, commanded a rate of 7¾%. Interest rates for mortgages rose from 9¼% to 9½% and by the year end had reached 9¾%. At the same time, the interest rate on government guaranteed National Housing Act mortgages rose to 9¾%.

Despite these disturbing conditions, your Company approved 1,210 mortgage applica-

tions for a total of \$22,000,000. Of this amount approximately \$15,000,000 was advanced during the year, resulting in a net increase of \$8,800,000 in the mortgage portfolio compared to the previous year. In these days of acute shortage of adequate living accommodation for many of our citizens, your Company is playing its part in providing funds to alleviate these conditions. The 1,210 approved mortgage applications represented 2,220 housing units (apartments, flats and individual dwellings).

It has long been a policy of the Company to assist homeowners who require loans of relatively small amounts for taxes, repairs, improvements and other bills. The Company provides mortgage money for such purposes in the cities, towns and rural areas of Nova Scotia and New Brunswick. Every request is considered on its merits and the Company does not refuse an application simply because the loan is too small to be worth the cost of administering it, nor because of an isolated location. This open policy has proved beneficial to the Company and to great numbers of small homeowners over the years.

MORTGAGE ARREARS AND FORECLOSURES

Four properties came into our hands during the year as the result of mortgage foreclosures. At the end of the year only one of these remained unsold, and a sale has been arranged since that date.

Our computer makes it possible to have an up-to-date record of arrears in mortgage payments at all times. At December 31, 1968, the total arrears were one-half of 1 per cent of our mortgage portfolio. This includes all arrears, even those less than a full month. This remarkable achievement was made possible by an excellent follow-up system administered by a competent staff.

PERSONNEL

Your Directors cannot overstate their appreciation to the General Manager and staff for their continued loyalty and dedication to the Company. The record-breaking results of the year just ended are due in large measure to their efforts. We wish also to record our sincere thanks to our agents and representatives for their excellent work.

During the past year the Company instituted a comprehensive group life, sickness and accident insurance plan for all employees at no cost to them. Your directors regard this as

a sound investment for the future rather than an added expense to the Company.

DIRECTORS

Effective July 1, 1968, Mr. Walter deW. Barss, Q.C., was appointed Chairman of the Board. On the same date Mr. George C. Piercey, Q.C., was elected President of the Company and Mr. S. S. Jacobson, B. Com., M.B.A. (Harv.) became Vice-President. The Directors met weekly throughout the year, and the Finance and Loan Committees met frequently, as required.

GENERAL OUTLOOK

The Company has enjoyed a line of credit with our bankers for many years. In 1968 these lines of credit were increased substantially, thus enabling the Company to have a greater degree of flexibility in its day to day operations.

The scarcity of serviced land and the great increase in the cost of money have caused many married couples to forego purchasing a home and to consider apartment accommodation. In the Halifax-Dartmouth area the construction of new dwellings has been reduced to negligible proportions except in a few localities within the enlarged City of Halifax where serviced land is available. The Company can do little to reverse this trend, which will continue until large areas of the recently annexed lands are provided with services and opened up for development. The very high costs involved will postpone such action for an indefinite period. In the meantime your Company has participated in the financing of many fine apartment buildings in the metropolitan areas and its interest in similar projects will continue for some time to come.

There are other localities where your Company has been a leader in providing funds for living accommodation. Great industrial development is planned for the Port Hawkesbury-Strait of Canso area and the Company has already participated in the provision of mortgage financing for housing and motel accommodation in that area. Your Directors believe the Company should play a vigorous role in these exciting developments. By blending caution and balanced judgment, and taking advantage of opportunities as they occur, the Company will grow and prosper as these new centres develop. This growth will be reflected in higher earnings for the Company and increased dividends for the shareholders.

In closing this report, your Directors urge all shareholders to support the Company in every way possible. In view of the tremendous competition for savings accounts and debenture sales, we need this support as never before. All banks, trust and loan companies are competing for the savings dollar. Shareholders can assist the Company greatly in this field by bringing our services to the attention of friends and acquaintances. Our present interest rate on non-chequing savings accounts is $5\frac{1}{2}\%$, accrued on the minimum monthly balance. In the past our shareholders have supported their Company exceedingly well and we know we can count on this support in these days of vigorous competition and great challenge.

G. C. Piercy
President

NOTE TO FINANCIAL STATEMENT

During the year ended December 31, 1968 the company, which previously used the taxes payable basis for accounting for taxes on income, adopted the tax allocation basis and accordingly, the net income for the year 1968 is stated at \$156,000 less than the amount which would have been reported if the previous basis had been used. The statement of revenue and expenditue and undivided profits for the previous year has been restated to place it on a comparable basis with the current year, with a consequent reduction in the reported income for that year of \$141,000. In addition to the deferred income taxes arising in the current and prior year, income taxes were reduced in prior years by an aggregate amount of \$554,000 as a result of claiming a mortgage reserve and other deductions for income taxes in excess of amounts charged in the company's accounts. No provision is being made in the company's accounts at this time for the latter amount.

Standing Senate Committee

STATEMENT OF
REVENUE AND EXPENDITURE AND UNDIVIDED PROFITS
Year ended December 31, 1968 (with comparative figures for 1967)

	1968	1967
Revenue	\$4,269,049	\$3,555,481
Cost of borrowed money	2,865,075	2,362,335
Administrative expense	389,384	340,021
Depreciation and amortization	17,800	16,182
	<u>3,272,259</u>	<u>2,718,538</u>
Net profit before income taxes	996,790	836,943
Income taxes—current	335,000	258,000
—deferred	156,000	141,000
	<u>491,000</u>	<u>399,000</u>
Net profit available for distribution	505,790	437,943
Dividends	254,123	254,123
Undivided profits for current year	251,667	183,820
Undivided profits from previous year	156,585	301,765
Reduction in provision for pension	3,000	3,000
	<u>411,252</u>	<u>488,585</u>
Transfers to:		
Rest account	—	100,000
Reserve for mortgages	—	232,000
	<u>—</u>	<u>332,000</u>
Undivided profits at end of year	<u>\$ 411,252</u>	<u>\$ 156,585</u>

(See accompanying note to financial statements)

ASSETS

	1968	1967
First mortgages on improved real estate and agreements of sale	\$55,599,734	\$46,783,453
Equipment and furnishings, less depreciation ..	51,896	58,661
Leasehold improvements, less amortization	39,903	42,299
Real estate held for sale	5,302	2,654
Sundry	14,311	14,892
Investments:		
Government of Canada and Government guaranteed bonds and accrued interest	464,630	260,477
Provinces of Canada and Provincial guaranteed bonds and accrued interest	289,176	354,281
Municipal bonds and accrued interest	826,048	776,367
Bank and public utility stocks	271,250	232,007
Total investments	<u>\$ 1,851,104</u>	<u>\$ 1,623,132</u>

(The investments in bonds and stocks are carried at values, which in the aggregate, are not in excess of quoted market values.)

Short-term investment (due January 16, 1968) ..\$	—	\$	201,603
Cash on hand and in banks	430,191		113,387
Total assets	\$57,992,441		\$48,840,081

(See accompanying note to financial statements)

LIABILITIES

	1968		1967
Debentures and accrued interest	\$45,740,110		\$38,281,054
Savings deposits	6,521,146		5,651,047
Bank loans, secured	400,000		—
Amounts held for insurance and tax payments on mortgaged properties	24,151		29,836
Dividends payable	50,825		50,825
Income taxes payable	109,670		85,485
Provision for pensions	61,000		64,000
Sundry	3,137		6,099
Total liabilities	\$52,910,039		\$44,168,346

Deferred credit

Deferred income taxes (see note)	\$ 297,000	\$	141,000
Shareholders' equity:			
Capital: Authorized 2,500,000 shares, par value \$2.00 each, issued and fully paid 847,075 shares	\$ 1,694,150	\$	1,694,150
Rest account	1,600,000		1,600,000
Reserve for mortgages	1,080,000		1,080,000
Undivided profits	411,252		156,585
Total shareholders' equity	\$ 4,785,402	\$	4,530,735
Total liabilities and shareholders' equity	\$57,992,441		\$48,840,081

The undersigned officials of the Nova Scotia Savings & Loan Company hereby certify that they have examined the financial statement of the Company and that, to the best of their knowledge and belief, the statement is correct and shows truly and clearly the financial condition of the affairs of the Company.

Walter de W. Barss,
Chairman.

G. C. Piercey,
President.

G. R. Guy,
Secretary-Treasurer.

AUDITORS' REPORT

We have examined the balance sheet of the Nova Scotia Savings and Loan Company as of December 31, 1968 and the statement of revenue and expenditure and undivided profits for the year then ended and have obtained all the information and explanations we have required. Our examination included a general review of the accounting procedures and such tests of accounting records and other supporting evidence as we considered necessary in the circumstances.

In our opinion, and according to the best of our information and the explanations given to us and as shown by the books of the company, these financial statements are properly drawn up so as to exhibit a true and correct view of the state of the affairs of the company at December 31, 1968 and the results of its operations for the year then ended, in accordance with generally accepted accounting principles which, except for the change in the basis of providing for taxes on income as described in the note to the financial statements, were applied on a basis consistent with that of the preceding year.

PEAT, MARWICK, MITCHELL AND CO.

Chartered Accountants

Halifax, N.S.

January 22, 1969

SAVINGS ACCOUNTS

4 per cent annum, calculated on the minimum monthly balance. Full chequing privileges.

DEPOSIT ACCOUNTS

5½ per cent per annum, calculated on the minimum monthly balance. Interest credited quarterly. Over-the-counter withdrawals.

TRUSTEE DEBENTURES

Issued for a one to five year period in bearer or registered form with interest payable by coupon or cheque, or the interest may be left on deposit at the debenture rate and received at maturity. Principal and interest are payable at par throughout Canada at The Bank of Nova Scotia and The Royal Bank of Canada.

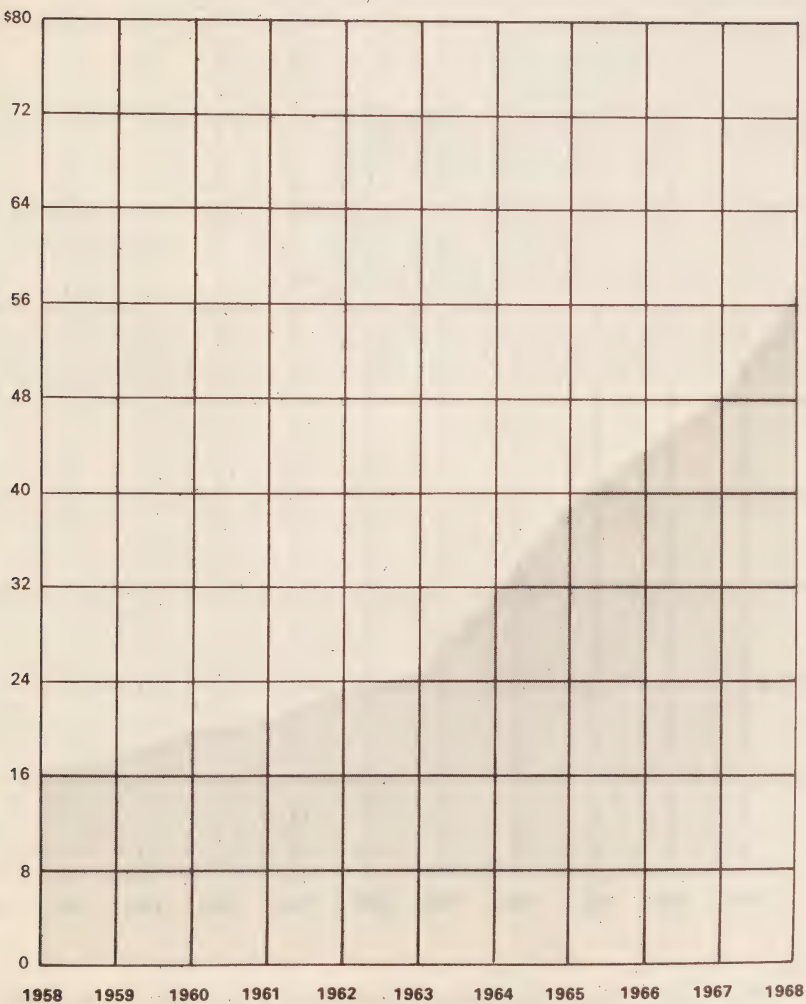
MORTGAGES

Mortgage funds are available for prime properties at competitive rates. The Company will also entertain applications for a limited number of multiple family dwellings and new commercial projects with long term leases.

10 YEARS OF GROWTH

ASSETS

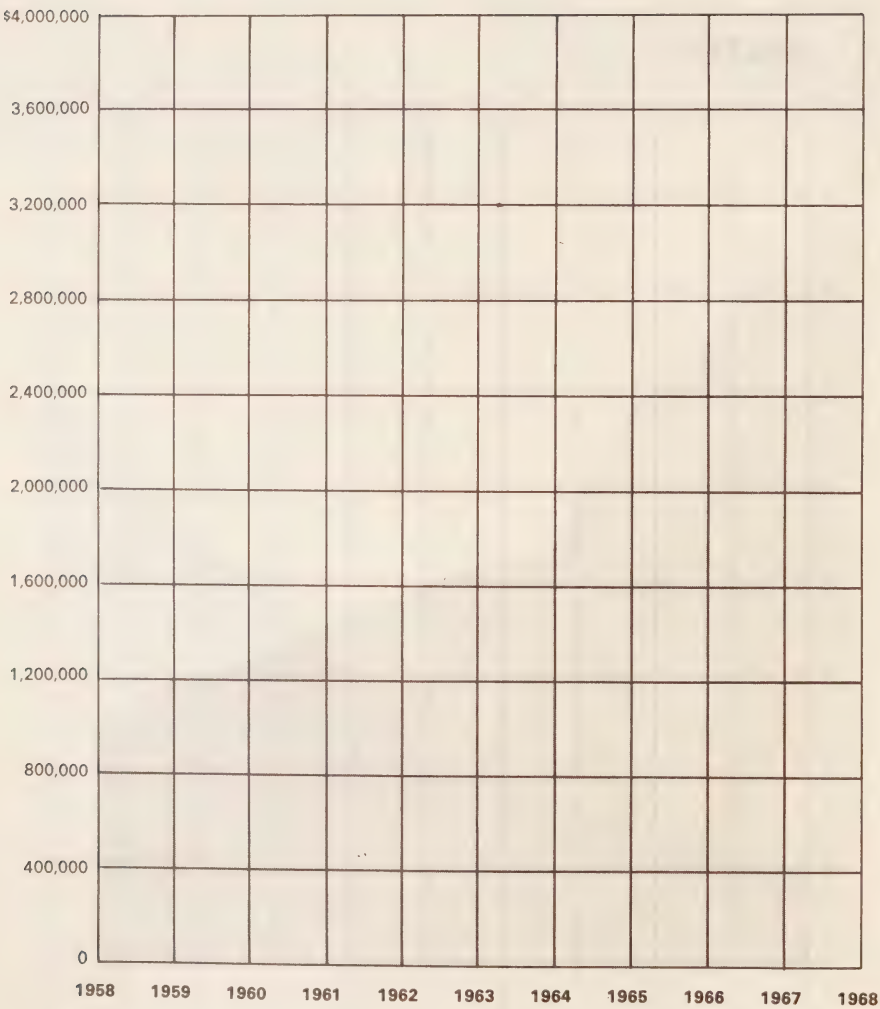
MILLIONS



In the last 10 years the Company's assets have increased over \$41,000,000.

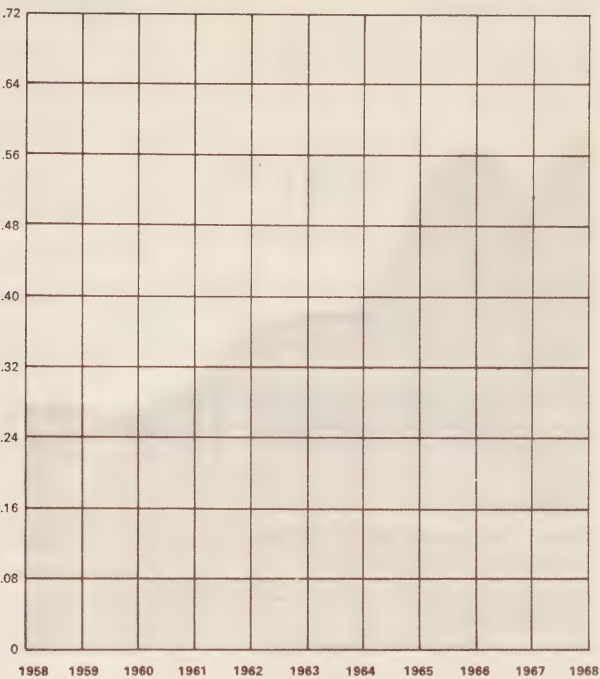
NOVA SCOTIA SAVINGS & LOAN COMPANY

RESERVES



In the last 10 years the Company's reserves have increased over \$1,900,000

EARNINGS
PER SHARE*



* Taking into Account
deferred taxes for 1967 and 1968

COMPANY'S AGENCIES

NOVA SCOTIA

Antigonish: Arthur D. Holmes

Bridgetown: Orlando & Hicks

Bridgewater: F. E. L. Fowke, Q.C.; John E. Marcus

Chester: M. E. Barkhouse

Dartmouth: Barss, Hatfield & Hare

Hantsport: Donald G. Burgher

Kentville: Ralph L. Macdonald; David J. C. Waterbury, Q.C.

Liverpool: Lester L. Clements, LL.B.

Lunenburg: John E. Marcus

Middleton: Crowell & Durland; Duncan D. R. Robinson

New Glasgow: Fraser & Hoyt Limited

Port Hawkesbury: J. Daniel MacLennan, LL.B.

Sydney: McIntye, Gillis & Ferguson; J. J. Khattar

Truro: Patterson, Smith, Matthews & Grant; Stephens-Keddy Limited

Windsor: N. D. Blanchard, Q.C.; McGrath & Niedermayer

Wolfville: Henry W. How, Q.C.

NEW BRUNSWICK

Fredericton: Cochrane, Stevenson, Sargent & Nicholson; Hazen E. Allen, C.L.U.;

David A. Lunney & Associates Limited

Minto: Earl B. Glenn Ltd.

Moncton: Stewart and Stratton

Saint John: McKelvey, Macaulay, Machum & Fairweather

NEWFOUNDLAND

St. John's: T. Alex Hickman, Q.C.

HEAD OFFICE:

Centennial Building
1645 Granville Street,
Halifax, Nova Scotia
Phone 422-6591

BRANCHES:

50 Portland Street,
Dartmouth, Nova Scotia
Phone 463-466618 King Street,
Saint John, New Brunswick
Phone 692-3337113 Archimedes Street,
New Glasgow, Nova Scotia
Phone 755-2010



First Session—Twenty-eighth Parliament
1968-69

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE
ON
BANKING, TRADE AND COMMERCE

LIBRARY
JUN 8 1969

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 35

WEDNESDAY, APRIL 30th, 1969

Second Proceedings on Bill C-165,
intituled:

"An Act to amend the Income Tax Act and the Estate Tax Act".

WITNESSES:

The Trust Companies Association of Canada: E. H. Heeney, President. (President, National Trust Co., Toronto). E. F. K. Nelson, Executive Director. J. K. Allison, Asst. Gen.-Mgr., Montreal Trust Co., Montreal. K. Burn, Q.C., Gen.-Mgr. and Counsel, Canada Permanent Trust Co.

Canadian Bar Association, Ontario Branch: Ronald C. Merriam, Secretary, Canadian Bar Association. J. Alexander Langford, Chairman, Wills and Trusts Section. F. Douglas Gibson, member. Frederick D. Baker, Vice-Chairman, Wills and Trusts Section. Francis J. Hamill, member.

Canadian Construction Association: Mark Stein, Eng., President. (President, Magill Construction Ltd.). Robert Hewitt, Eng., member CCA Legislation and Taxation Committee. (President, Hewitt Equipment Ltd.). S. D. C. Chutter, General Manager. K. V. Sandford, Taxation Officer.

APPENDICES:

"D"—Brief from Trust Companies Association of Canada.

"E"—Brief and appendix from Canadian Bar Association.

"F"—Brief and excerpts of letters to Association, from Canadian Construction Association.

The Queen's Printer, Ottawa, 1969

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Leonard
Aseltine	Desruisseaux	Macnaughton
Beaubien	Gélinas	Molson
Benidickson	Giguère	Phillips (<i>Rigaud</i>)
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Isnor	Welch
Connolly (<i>Ottawa West</i>)	Kinley	White
Cook	Lang	Willis—(30)

Ex officio members: Flynn and Martin

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, April 22nd, 1969:

“With leave of the Senate,

The Honourable Senator Connolly, P.C., resumed the debate on the motion of the Honourable Senator Hayden, seconded by the Honourable Senator Langlois, for the second reading of the Bill C-165, intituled: “An Act to amend the Income Tax Act and the Estate Tax Act”.

After debate, and—

The question being put on the motion,

The Senate divided and the names being called they were taken down as follows:—

CONTENTS

The Honourable Senators

Aird,	Davey,	Inman,	McElman,
Argue,	Desruisseaux,	Isnor,	Petten,
Boucher,	Eudes,	Kickham,	Phillips
Bourget,	Fergusson,	Kinley,	(<i>Rigaud</i>),
Bourque,	Fournier	Kinnear,	Rattenbury,
Burchill,	(<i>de Lanaudière</i>),	Laird,	Robichaud,
Carter,	Giguère,	Lefrançois,	Roebuck,
Connolly	Gouin,	Leonard,	Smith,
(<i>Ottawa West</i>),	Hastings,	Martin,	Urquhart—36.
Croll,	Hayden,	McDonald,	

NON-CONTENTS

The Honourable Senators

Beaubien,	Fournier	Macdonald	Quart,
Bélisle,	(<i>Madawaska-</i>	(<i>Cape Breton</i>),	Thorvaldson,
Blois,	<i>Restigouche</i>),	MacDonald	Walker,
Choquette,	Gladstone,	(<i>Queens</i>),	Welch,
Flynn,	Haig,	Méthot,	White,
	Irvine,	Pearson,	Willis,
		Phillips	Yuzyk—21.
		(<i>Prince</i>),	

So it was resolved in the affirmative.

The Bill was then read the second time, on division.

The Honourable Senator Hayden moved, seconded by the Honourable Senator Bourget, P.C., that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.”

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, April 30th, 1969.

(38)

At 11.45 a.m. the Standing Senate Committee on Banking, Trade and Commerce *resumed* consideration of:

Bill S-34, "An Act to amend the Income Tax Act and the Estate Tax Act".

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien, Blois, Carter, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Flynn, Gélinas, Giguère, Haig, Hollett, Isnor, Kinley, Leonard, Macnaughton, Molson, Phillips (*Rigaud*), Thorvaldson, Walker, Welch and Willis. (24)

Present, but not of the Committee: The Honourable Senators Connolly (*Halifax North*), Fergusson, Inman, Macdonald (*Cape Breton*), Smith and Urquhart. (6)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The following witnesses were heard:

The Trust Companies Association of Canada:

E. H. Heeney, President. (President National Trust Co., Toronto)

E. F. K. Nelson, Executive Director.

J. K. Allison, member. (General Manager, Montreal Trust Co., Montreal)

K. Burn, Q.C., member. (Gen.-Mgr. and Counsel, Canada Permanent Trust Co.)

At 1.00 p.m. the Committee adjourned.

At 4.45 p.m. the Committee *resumed*.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien, Blois, Carter, Desruisseaux, Haig, Hollett, Isnor, Kinley, Leonard, Molson, Phillips (*Rigaud*), Thorvaldson, Walker, Welch and Willis. (17)

Present, but not of the Committee: The Honourable Senators Fergusson, Laird and Sullivan. (3)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

It was *Agreed* that the Briefs presented today be printed as Appendices "D", "E" and "F" to these proceedings.

The following witnesses were heard:

Canadian Bar Association, Ontario Branch:

Ronald C. Merriam, Q.C., (Secretary, Canadian Bar Association.)

J. Alexander Langford, Chairman, Wills and Trusts Section.

F. Douglas Gibson, member.

Frederick D. Baker, Vice-Chairman, Wills and Trusts Section.

Francis J. Hamill, member.

Canadian Construction Association:

Mark Stein, Eng., President. (President, Magill Construction Ltd.)

Robert Hewitt, Eng., member CCA Legislation and Taxation Committee.

(President, Hewitt Equipment Ltd.)

S. D. C. Chutter, General Manager.

K. V. Sandford, Taxation Officer.

At 6.40 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

EVIDENCE

Ottawa, Wednesday, April 30, 1969

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-165, to amend the Income Tax Act and the Estate Tax Act, met this day at 11.45 a.m. to give further consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, we now resume our consideration of Bill C-165. We have three groups to make representations today: The Trust Companies Association of Canada, the Canadian Bar Association, and the Canadian Construction Association.

Mr. E. H. Heeney, President of the National Trust Company, is present. I believe you are going to carry the ball, Mr. Heeney.

Mr. E. H. Heeney, President, The Trust Companies Association of Canada: Yes, Mr. Chairman.

Senator Walker: Mr. Heeney is also President of the Trust Companies Association of Canada.

The Chairman: Yes.

Mr. E. H. Heeney: Mr. Chairman and honourable senators, if I may, I would like to proceed in this way. First of all I should like to present the delegation so that you know who they are. On my right Mr. E. F. K. Nelson, Executive Director of The Trust Companies Association of Canada; Mr. Kenneth Burn, Q.C., General Manager and General Counsel of the Canada Permanent Trust Company; Mr. W. A. Bean, C.B.E., Deputy Chairman of the Canada Trust and Huron & Erie Mortgage Corporation, from London; Mr. J. K. Allison, Assistant General Manager, Montreal Trust Company, and Mr. J. W. R. Seattle, Vice-President of the Royal Trust Company in Montreal.

I have a few opening comments to make, if I may, then I would suggest that the brief,

which is already in your hands, should not be read except with respect to the last nine pages dealing with some technical points that we would like to emphasize. I would like to have Mr. Nelson read that following my few comments.

Senator Walker: Have you copies of the brief?

The Chairman: Copies of the brief were distributed to all members of the committee. What I would suggest is that the committee now give a direction that we append a copy of the brief to our proceedings today.

Hon. Senators: Agreed.

(*For copy of brief see appendix "D"*)

Mr. Heeney: We feel that The Trust Companies Association of Canada has a very definite interest in this bill. Our particular reason for being here today is to appear on behalf of our clients, many of whom are very concerned about some of the items of this bill. The Trust Companies Association of Canada represents 31 member companies holding more than \$14 billion, and we carry on business in over 500 offices across Canada. We deal in the ordinary course of business with people and with companies. We are very close to people who have money, and many people who have no money, in this country, and all our clients are concerned with what happens under Bill C-165.

Since the brief was prepared we have had the advantage of reading many of the speeches that have been made in the Senate during the debate on the bill and we do not propose today to belabour things that have been said, and said so well in the Senate. We are merely going to underline one or two significant points.

Professional trusteeship is the business of trust companies. Recognition that the appointment as an executor and trustee is one of the most serious and demanding confidences that a person can require another to undertake is

fundamental to the concepts of law governing the trust business. In actual fact the law requires a higher standard of performance from the professional trust company than it does from the inexperienced private individual who finds himself appointed executor and trustee of the estate of a deceased friend or acquaintance.

One of the more exacting duties of an executor is the calculation and payment of taxes and duties before the estate can be distributed to the beneficiaries. In order that the executor can fulfil this responsibility effectively and expeditiously, the charging sections of the applicable legislation must be clear and unambiguous. It seems to us that the bill—particularly the charging sections—is drafted with little concern for the principle that taxation statutes should be framed in such clear and unambiguous language.

Quite apart from the difficulties of construction and interpretation, we believe that this bill will make the settlement of tax liabilities in an estate an extremely complicated procedure. Indeed, in some cases we wonder how this can ever be accomplished. To the degree that it is more complicated to administer, it will reduce the productivity of the legislation and thus the flow of tax revenue to the Government—a point that has already been well covered in the Senate debates.

In our brief we have stated our principal reasons for being strongly opposed to this bill. To recapitulate, the main grounds are, first, the unreasonably high tax rates and, second, the integration of the gift and estate taxes, and the inclusion in the estate for tax purposes of the amount of taxable gifts made in the donor's lifetime with the gift taxes paid thereon. The tax burden imposed by this legislation will now fall more heavily than ever upon the medium-size estates on the death of the surviving spouse. Furthermore, in framing this legislation there has been little apparent concern for the other alarming tax loads that Canadians are being asked to carry by other levels of government, provincial and municipal.

The experience of trust companies in handling estates shows that the expectation of heavy death taxation is frequently a dominant factor leading to sales of privately owned businesses. This point has already been made in the Senate, and some quotations were then made from the annual

speeches of the chairmen and presidents of some of our companies.

This bill introduces, for the first time into Canadian life, a whole new philosophy of punitive taxation. The new gift tax rates are, in our opinion, unrealistic. They appear to be conceived as a prohibitive penalty rather than as an equitable tax related to the need to increase public revenues. It is our understanding that the principal function of a gift tax is to prevent avoidance of death tax by gifts made during the donor's lifetime. It is, in a sense, an advance payment of death taxes and it therefore seems illogical to fix the rates for this advance payment above the rates for death taxes. In our brief we have recommended that the rates should be no higher than the estate tax rates and that the provision in the existing law excluding all gifts made more than three years before the death of the donor be maintained. Furthermore, the cumulative formula relating to gift taxes imposes upon a Canadian resident who makes a taxable gift a tax accounting burden which he must carry with him to the grave. On his death the burden will be shifted to his executors and, where there is a tax deferral, even to his widow's executors to account for all the taxable gifts made during his lifetime—a most unnecessary administrative nightmare.

In conclusion we would like to emphasize that we are deeply concerned with the economic consequences of this new taxation. This concern is succinctly expressed in the quotation from the recent Report of the Ontario Economic Council, set out on page 4 of our association's brief:

Those responsible for guiding the course of our nation's development need only look to history to find proof that nearly every past civilization has hastened its ruin through its dissipation of capital by taxation.

Those are my general comments. I should now like, if you agree, to ask Mr. Nelson to read the technical part of our brief.

The Chairman: Before that happens, are there any questions honourable senators would like to ask on the statement Mr. Heeney has made, or is it agreed that we should hear the technical presentation first?

Hon. Senators: Agreed.

Mr. E. F. K. Nelson, Executive Director, The Trust Companies Association of Canada: Honourable senators, I am starting at the last paragraph on page 10 of our brief.

[Reading]

Following the introduction of the budget resolutions it became apparent that they contained retroactive implications inasmuch as subsequent to the introduction of the resolutions but prior to the passing of the enabling legislation some persons would die without being able to determine precisely the state of the law which would apply to their estates. In addition, even after the legislation becomes definitive there will be the tremendous physical task of amending the wills of many people in order that they may be drawn in a manner to attract the minimum impact of federal estate tax.

In recognition of this situation there was included in Bill C-165 an alleviating provision which is contained in section 13(2) of the bill. In effect, it provides that in the case of persons who die after October 22, 1968, but before August 1, 1969, the exemptions which will apply to their estates will be the greater of the exemptions allowed under the act as they applied at October 21, 1968, or the sum of \$20,000 plus the exemptions that are proposed by the bill.

We submit that equity would be better served if section 13(2) were to be changed to provide that an executor might elect, in the case of any death occurring between October 22, 1968, and August 1, 1969, that the estate be taxed under the act as it stood on October 21, 1968, or as amended by the enactment of Bill C-165.

The other provision to which we would draw your attention is one of considerable concern to us as professional trustees. It is the enactment of the new section 3(1a) under subsection 2 of section 2 of the amending bill which provides that upon the death of a person who has been the beneficiary of a trust created by his or her spouse which is exempt from gift tax and estate tax, the property comprising such trust is deemed to be property passing on the death of the donee and is included in his or her estate to determine the rates of duty which will apply. Other provisions in the act provide that the duty, as so determined, will be apportioned between the trust property and the other separate assets of the donee.

Under the general scheme of this legislation, if the estate tax or gift tax has been suspended during the lifetime of the spouse who was the donee under the trust, it is understandable that the property comprising

the trust should attract taxation upon the death of the donee. However, it is our submission that the treatment of this property as if it were a property of the donee results in inequitable taxation of individuals and presents administration problems to trustees which are in direct conflict with their duties as have been evolved under the law pertaining to the administration of trusts.

We suggest that this concept of the national shifting of the property from one estate to another is an oversimplification and has been done without a full consideration of the actual situations which obtain in a number of estates. We might first point out that where a man leaves his property outright to his wife after this legislation has been enacted he will do so with full knowledge of the implications which will arise upon her death in so far as Federal estate taxes are concerned.

We submit that this combining of estates creates inequities in the taxing of individuals. While the taxing measure which you are considering is the taxing of an estate, the ultimate burden is, of course, borne by the beneficiaries and we think it is only proper to consider the ultimate effect of the tax on the beneficiaries.

It is not uncommon, where there are no children of a marriage and where both parties have separate assets derived independently of each other, for the spouses, after providing mutual protection for each other under their wills, ultimately to dispose of their separate assets to their respective blood relatives. Consider the case where the wife has a maiden sister and the husband has nephews and nieces being children of his brothers and sisters. It is more usual for the husband to leave the larger estate and for him to predecease his wife. If he provides a tax exempt trust for the benefit of his wife during her lifetime the assets of this trust are, upon her death, grossed with her separate assets in determining the rates of duty which are applicable to their combined assets. May we illustrate what we consider to be the inequities arising under this provision by the following example.

It is not unusual for a widow to remarry and, particularly if the remarriage takes place reasonably late in life, she is likely to survive her second husband and she may, for the balance of her lifetime, be the beneficiary under exempt trusts established by both her deceased husbands. If both husbands had had children by their first marriages and the

children are the ultimate beneficiaries under their respective fathers' estates, they will ultimately pay taxes based on the combined amount of the two estates, even though there is no rational basis for treating them as one taxable unit upon the death of the widow. A cursory review of estates in which our companies have been involved would indicate that this situation occurs frequently and often there is considerable disparity between the size of the two estates. One can have the situation where the beneficiaries of an estate of perhaps \$100,000 or \$200,000 will pay taxes at rates which are designed to apply to estates of a million dollars or more.

We mentioned previously that this same provision leads us to believe that we will face administrative problems which are in conflict with our duties as a trustee. The duties of a trustee must be executed meticulously and the trustee must account to the Court for disbursements made from the trust funds under his control. Perhaps the simplest application of this principle is that a trustee does not issue a cheque in payment of any account unless he is satisfied as to its correctness and this applies to the payment of estate taxes as well as any other accounts incurred.

As the act under consideration is now drafted, if the executor of the surviving spouse is a different person from the executor of the spouse who died first and a tax exempt trust is involved in the first estate, an assessment for tax will be prepared by the Department and levied against both executors made on the basis of information filed and decisions made by the two different executors independently of each other.

Let us refer to two such trusts as Trust A and Trust B. If the beneficiaries of both trusts happen to be the same, the problems can be reduced by obtaining the consents of such beneficiaries but again, there are sufficient instances of cases where the beneficiaries are not the same to pose a problem of considerable magnitude. In order to determine the tax, the assets comprising Trust A and Trust B must be valued. If the assets are principally marketable securities there is very little danger of a mistake being made in either trust. However, in many instances there are holdings of real estate, shares in private companies and other assets, the value of which might be a matter of opinion and very frequently involve prolonged negotiations between the trustee and the taxing authorities before a mutually agreeable valuation is

determined. In some cases the matter will have to be referred to the court for adjudication.

The trustee of Trust A has no right to demand disclosure of information concerning the assets which are held in Trust B and as a matter of fact, it would be a breach of trust if this confidential information were disclosed to a stranger without the consent of the beneficiaries. This becomes particularly pertinent where the asset of the trust is a family company. We therefore can envisage that in certain instances we, as trustee, will receive an assessment levying duties upon a trust under our administration where it is factually impossible for us to determine the correctness of such assessment.

Upon the death of a life tenant the remainders of a trust are entitled to have the assets of the trust delivered to them within a reasonable time. Obviously if a tax clearance must be received before distribution a reasonable time would encompass the length of time which it would take a trustee with ordinary diligence to obtain that clearance. We are now confronted with a situation where this period of time is not determined by our diligence but it is determined by the diligence or lack of diligence of the person handling the affairs of the spouse who survived. In certain instances it is conceivable that there is no one sufficiently interested in the affairs of the surviving spouse to take the necessary steps to provide the estate tax authorities with even the information that he or she left no assets of any value. We are concerned that this can lead to situations where the administration of Trust A will drag on indefinitely. It is unlikely under the circumstances that any court would hold the trustee responsible but as a practical matter the beneficiaries will undoubtedly associate the delay with his administration of the trust and their relations will deteriorate.

Particularly, as we feel there is no logical justification for the proposed method, we submit that it is a more reasonable approach to consider that the taxing burden always remains with the exempt trust but this burden is merely suspended while the surviving spouse is enjoying the benefits of the trust. Upon he or she ceasing to enjoy those benefits the trust would then become taxable as a separate entity. In determining such taxation any benefits which the testator had given outright at the time of his death would be brought into account for determining the rates applicable to the trust.

If trusts are taxed in this manner, we believe that it would permit a wider application of the principle that benefits between spouses should be tax exempt. We specifically refer to the fact that under the proposed legislation trusts which contain a clause which provides that benefits are diminished or cease upon remarriage are not tax exempt. In a statement issued by the Minister of Finance on December 31, 1968, he indicated that it was not practical to exempt such trusts because this would involve taxing the widow upon remarriage as though she had made a gift of the assets in the trust. With due respect, we submit that it is not the widow who would be taxed but that it would be the trust as such and the burden would be transferred to the ultimate beneficiaries of the trust. It would be a relatively simple matter that such a trust become taxable on the death or remarriage of the surviving spouse, whichever first occurred, and at the same time would extend the same equitable principles of taxation to such trusts.

We understand that there is no intention to levy tax on a trust during the lifetime of a surviving spouse where he or she is the only person who is entitled to receive any portion of the capital or income of the trust during his or her lifetime. We have some concern as to whether this intention is fully implemented under the present wording of Section 3(1)(b) of Bill C-165 and would refer you to its opening paragraph. We are concerned that the present language might lead to an interpretation that the interests of all the beneficiaries under the trust must be absolute and indefeasible at the time of its establishment. We would suggest that this should be clarified by adding such words as "in which the interest of the surviving spouse" to "by his will" on line 16 so that the amended subsection would read—

(b) the value of any gift made by the deceased whether during his lifetime or by his will *in which the interest of the surviving spouse can within six months, etc.*

Canada is signatory to a number of bilateral tax conventions, intended to eliminate or reduce the double imposition of death taxes. A usual feature of these conventions is a limitation of the period, following the date of death, during which a claim for foreign tax credit or refund may be made. In most cases the period is six years from the date of

death, although the Canada-France convention provides for only five years.

Bill C-165, in one kind of situation, would seem to nullify the purpose of these conventions. This is where a trust is involved, in which the spouse of the deceased has an absolute and indefeasible interest and which, therefore, would not be taxable under the Bill. If the trust includes foreign property, the other country, signatory to the convention, can impose tax at the time of death but would not do so again on the death of the surviving spouse, the life tenant.

Canada, on the other hand, would not impose tax on the first death, but would do so on the death of the surviving spouse. Should the surviving spouse die before the limitation expires, presumably the foreign tax credit could apply but, if the surviving spouse outlives the period of the limitation, the foreign tax credit would be lost.

In this shrinking world, many estates or more properly in this case, trusts, will be invested in greater or lesser degree in foreign, probably American, securities. The problem therefore is of some significance and the potential impact on the estates concerned could be serious.

The apparent solution is to obtain a modification of the tax conventions, in which Canada is involved, seeking an extension of the limitation, for Canadians at least, to the lifetime of the surviving spouse. We draw this to your attention in the hope that practical steps can be taken to overcome the difficulty.

Companies have expressed concern to us about the status, under Bill C-165, of voluntary payments by an employer to the widow of an employee.

Section 7 of the Estate Tax Act is amended by section 3 (1)(a) of the bill, to provide that where, within six months or such longer period as may be reasonable in the circumstances, the value of any property passing on the death of the deceased to which his spouse is the successor be established to be vested indefeasibly in his spouse, it would qualify for the exemption from tax of property transferred between husband and wife.

The phrase "or such longer period as may be reasonable in the circumstances" does not make it clear that the payments under discussion, which would come under section 3(1)(1) of the Act, are of a type which would be exempt from estate tax.

Voluntary payments made by an employer to a widow of a deceased employee may not have been contemplated until long after the employee's death. We suggest that it is well within the spirit of Bill C-165 that the exemption should be clearly written into the law and not be subject in each case to administrative decision.

Mr. Chairman, there was an additional piece which is not included in our brief. I believe it was our president's hope that this might be presented by Mr. Burn. It would take about two minutes.

Mr. K. Burn, Q.C., General Manager, General Counsel, Canada Permanent Trust Company, Toronto: Mr. Chairman and honourable senators, after the preparation of our submission of March 13, a further matter was brought to our attention, to which we would respectfully direct your consideration.

We would ask you to consider the example of where a husband leaves his estate in trust for his wife during her lifetime and as there are no children of the marriage, after her death one-half is to be paid to nephews and nieces and the other one-half to designated charitable organizations. We would hope that it would be the intent of the legislation and the understanding of the Honourable Senators that under such circumstances, there would be no estate taxes payable until the death of the wife and that upon her death the one-half of the estate passing to nephews and nieces would be taxed and the one-half passing to charities would be exempted. We find this result difficult to justify under the wording of Bill C-165 as correlated with the present provisions of the act. There is no problem concerning the exemption from duties during the lifetime of the widow. Under section 2(2) of the amending legislation the trust estate shall be deemed to be property passing on the death of the widow. By section 12(4) of the Bill the nephews and nieces and charities are defined as successors of the deceased widow.

However, in order to qualify for the exemption to the charities you must examine section 7(1) (d) of the present Act, the opening words of which read as follows:

"the value of any gift made by the deceased whether during his lifetime or by his Will..."

In view of the fact that the tax is applicable on the property passing on the death of the widow we do not believe that as the provisions presently read an exemption can

be claimed as the gift in this instance has not been made by the deceased as it was made under the Will of her husband.

In reiteration of the comments made in our main submission, we feel that this is another inequity resulting from the notional shifting of the property from one estate to another.

Senator Connolly (Ottawa West): Mr. Chairman, while it is fresh in my mind, may I put a question to the second last witness? Mr. Nelson, just towards the end of your presentation, you talked about a problem arising out of the fact that the company which employed a spouse paid an allowance to that spouse's widow after his death. Would those allowances, if made after his death, not be taxable in her hands as income?

Mr. Nelson: Yes, I would assume they would be, sir.

Senator Connolly (Ottawa West): If they are income to her and taxable to her—you say this act puts them in his estate as well?

Mr. Nelson: Perhaps I answered the question hastily. May I refer you to one of our experts?

Mr. Burn: In the present legislation it is not uncommon for estates to be taxed as both income and for estate duty purposes. Presumably that could continue, under certain circumstances, in the future. One of the examples I have in mind would be, if there was a defined pension for a widow upon death of her husband. Under the previous act, as it now stands, that would be exempted.

Senator Connolly (Ottawa West): From the estate?

Mr. Burn: From the estate.

Senator Connolly (Ottawa West): But it would be taxable as income in her name?

Mr. Burn: Yes, but let us say that, five years after the date of death, the company, in the goodness of its heart, decided that the pension amount was not sufficient and paid a supplementary pension, it is suggested that this was not absolutely and indefeasibly vested in the widow within a reasonable time after the death of the spouse and presumably could be brought into her estate taxes.

Senator Connolly (Ottawa West): Under this bill?

Mr. Nelson: Yes.

Senator Connolly (Ottawa West): Under normal circumstances you would expect that additional amount of pension that was paid to her to be taxed as income in the year in which she received it.

Mr. Nelson: It would be subject to income tax, yes.

Senator Connolly (Ottawa West): In any event, it would be subject to income tax.

Mr. Nelson: That is right.

Senator Connolly (Ottawa West): Would you point out the section of this bill which says that conceivably that additional amount would also be added to the estate of the deceased.

The Chairman: I do not think the witness means necessarily, because, if she spent it and did not have it when she died, it would not be any part of her estate.

Mr. Nelson: No. With due respect, sir, the example as it now stands says that, in order for this gift to be exempt, it must be vested absolutely and indefeasibly in the widow within six months after the date of death or within reasonable time thereafter. What is within a reasonable time thereafter becomes a question of judgment. The example I have quoted—and I do not know whether my fellow expert has some other examples in mind—has become increasingly common practice, and we feel it is open to the assessors to say that, if this benefit arises ten years after the date of death, that is not a reasonable time.

Senator Aseltine: Do you think it would be?

Mr. Nelson: I think the nature of the gift itself is reasonable, sir, because it cannot be foreseen at the time of death. No one can project what the cost of living might be.

Senator Beaubien: When you say the gift might become part of the estate, do you mean, for example, that five years after the man died, if the widow had not enough to live on and if the company which had employed her husband gave her \$4,000 a year, do you mean that that amount might be capitalized as a capital sum bringing in \$4,000 a year and be brought into the estate that way?

Mr. Nelson: We feel that the act is open to that interpretation.

Senator Beaubien: They might say that it was 6 per cent of \$70,000, or something like that, and would tax it on the capital value of \$70,000.

Mr. Nelson: No, it would be only any increase that was made in the payment that was established at the date of death.

Senator Beaubien: Let us say the increase was \$4,000. That might be capitalized as \$70,000.

The Chairman: Why do you call it an increase or agree that it is an increase? It may be another payment.

Senator Beaubien: Well, it would not matter; it would be the same thing, would it not?

Mr. Heeney: If the company had given a pension of X dollars with a widow's benefit, under the proposed law the widow would pay no tax. If there is something which, perhaps for inflation or other reasons, would come later, we feel that it would probably be within the Minister's discretion to grant it. We think it is in the spirit of the amendment. We feel that it should not be taxed.

The Chairman: If you follow that alone, if the company has any doubt, they may put her on the payroll for this amount of money. So that you avoid the question entirely.

Senator Connolly (Ottawa West): In effect, I would submit that that is what they are doing. This is why I wondered about the objection, because, in any event, the estate passing from the husband to the wife on the husband's death is exempt from tax under this act. Then what does it matter whether it is added to the husband's estate? I would suggest that the clear interpretation in the background is that it would be taxable as income in the wife's name and, if it were to go into the husband's estate, it would not make any difference to the wife. Conceivably, it would make the difference, if the wife saved it all and it was transmitted later to the children.

The Chairman: No, it may be that what they are concerned about is that in some fashion, although I do not appreciate just how now, this additional payment, being the capitalized amount of it or the valuation amount, might increase the aggregate net value of the donee-spouse's estate, and the only effect there would be on rates. Is that not right?

Senator Connolly (Ottawa West): And in respect of the next generation.

The Chairman: Yes, but, first of all, you have to take the first hurdle. How in those circumstances can it be considered as a gift arising from the husband?

Senator Connolly (Ottawa West): That is the first question, yes. I just wonder whether there is really any serious objection so far as the witnesses are concerned.

The Chairman: Well, senator, I think it is serious because they presented it. I think it is being presented on the basis not that this is what would occur but that the language in the bill requires clarification.

Senator Connolly (Ottawa West): Would they mind pointing out the section again.

Mr. Heeney: This case was brought to our attention by a number of financial institutions, members of our association, who were concerned about the future of it. That is how it came to our attention.

Senator Connolly (Ottawa West): I do not quarrel with the idea, except to say that I wonder whether it is well founded. Could I have the section of the bill which gives you the concern.

Mr. Heeney: Section 7 of the Estate Tax Act, amended by section 3 (1)(a) of the bill.

Senator Connolly (Ottawa West): That is page 22 of the bill, is it?

Mr. Heeney: Perhaps a better reference in this case might be section 3 (1)(1) of the act.

Senator Connolly (Ottawa West): I hope there is a better reference, because that first reference is three pages long.

Mr. Burn: May I say a word? The section dealing with these voluntary death benefits has not been changed. It is not in the bill which is before you. It is in the present legislation. It is section 3 (1) (1). It subjects to tax voluntary employer payments and other death benefits. Our difficulty is that these voluntary death benefits are usually made to widows. The amending bill which you have before you exempts from estate taxes the value of any property passing on the death of the deceased to which his spouse is a successor, that can within six months after the death of the deceased, or such longer period as may

be reasonable, be established to be vested indefeasibly in the surviving spouse.

We find by practice, and there are certain income tax implications in this, that corporations, when they vote a continuing allowance to a surviving widow, usually couch the resolution so doing in such a way that its continuance is at the pleasure of the board of directors. In other words, it is very seldom that you see a fixed amount or an absolute commitment for life.

Under those circumstances, we think it is difficult to argue, while it is expected that this is going to continue, that you can say, categorically, in view of the resolution, that that capitalized amount is vested absolutely and indefeasibly in the widow within six months after death. That is why we say, "or within such reasonable period".

Senator Connolly (Ottawa West): In the case you illustrated so clearly, since there is not an indefeasible vesting in the widow because of the resolution of the board of directors you then as a trustee would say that this is income to the widow and would be taxable in her hands.

Mr. Burn: It is income to the widow but there would also be the question whether it is taxable by virtue of section 31(1). But then does it qualify for the exemption because it is going to a surviving spouse?

Senator Molson: If the resolution of the board of directors is changed with regard to such ex gratia payments, that should correct it.

Mr. Burn: That would take care of it for estate tax purposes, but then there is the possibility of the Income Tax Department saying that this widow received an undertaking from the company that she would be paid \$4,000 for the rest of her life that it was taxable for its capitalized value in the year in which it was voted.

Senator Connolly (Ottawa West): Surely they never tax for income tax purposes on the basis of capitalized value. Surely it is taxed on the amount of income paid in the year.

Mr. Burn: In practice that is the case but one must always keep in mind the doctrine of constructive receipt.

The Chairman: But that refers to income.

Mr. Burn: Receipt of a benefit.

The Chairman: If I get \$4,000 this year and I know I am going to get \$4,000 next year, are you suggesting that they can capitalize that and that that constitutes my income in the first year?

Mr. Burn: Well, the Income Tax Act covers the taxing of a death benefit. How do you measure the benefit? It is suggested by some tax people that if in a year a company makes an absolute and indefeasible decision to pay a widow for the rest of her life, that that decision has resulted in a benefit to her in that year even though it is payable over future years. Nevertheless she has benefited by that decision in that particular year and that is where the danger lies.

Senator Connolly (Ottawa West): I would like to be on the other side in that, and I would like to have the chairman as my counsel.

Senator Phillips (Rigaud): Have there been any representations made to the committee of the House of Commons?

The Chairman: There was not any hearing in the House of Commons because the bill was considered in committee of the whole. The only place submissions might have been made was in the department or to the minister. I assume that was done.

Senator Connolly (Ottawa West): Could I have one other question. I ask this because I have not read the pertinent sections of the act. Under the new regulations you can make a gift of \$2,000 and if you go over that you begin to come into this higher rate of gift tax. Now at the date of death of the donor the amount of those gifts are included in his estate for estate tax purposes.

The Chairman: Not to a spouse.

Senator Connolly (Ottawa West): Anything taxable over \$2,000. If you give \$2,000 it is included in the value of your estate. Now, what I want to know is is it clear that you get the benefit of the estate tax paid on the gift which is now assimilated into the estate after the death of the donor?

Mr. Burn: First of all I think that all gifts made within a three-year period prior to the death of the donor are brought back into the estate for estate tax purposes unless they can qualify for the exemption on the basis that they were made usual and customary and in keeping with the size of the man's income. That is within the three-year period. For pur-

poses of establishing the rate only the cumulative gift size is added back to the estate, but that is only for the purpose of establishing the rate and the cumulative sum is only the sum by which it exceeds the \$2,000.

Senator Connolly (Ottawa West): Now I can ask my precise question. Let us say for the sake of argument that a man makes a \$10,000 gift and the rate is 35 per cent. What is added back into the estate, the \$10,000 or the \$10,000 plus 35 per cent because in effect he has divested himself of \$10,000 plus 35 per cent.

Mr. Burn: In establishing the rate the cumulative gift sum plus the tax plus \$20,000 is added to the estate. Because the rates on the rate schedule start at \$20,000—that is in the new rate schedule.

The Chairman: But it is just a question of putting it in and taking it out. It does not really affect the situation. You have the rate schedule with \$20,000, but there is no tax payable if you look at it on a commonsense basis and this is a question of putting it in and taking it out.

Any other questions? We still have some material here to digest before dealing with the departmental officials.

Senator Walker: At the bottom of page 4 you have the following:

Those responsible for guiding the course of our nation's development need only to look to history to find proof that nearly every past civilization has hastened its ruin through its dissipation of capital by taxation.

Is that a quote, Mr. President?

Mr. Heeney: That is a quote from the report of the Ontario Economic Council.

The Chairman: Mr. Heeney, the moment you accept as a principle of a policy that gifts and gift taxes should be integrated with estates and estate taxes then, some of the things you are talking about are things that inevitably follow.

Mr. Heeney: That is right. It is the principle of integration that is the basic problem.

The Chairman: By integration it is sought to phase out the field of gifting and to preserve the estate and to have it accountable at the time of death or at the second stage. I suppose that is not necessarily incidental to the principle of integration.

Mr. Heeney: I suppose that is so. It is the principle of integration we are attacking. If you accept the principle of integration these other things follow from that.

The Chairman: You understand that on questions of policy the Government has made certain decisions and this is in here. What we have to decide is, firstly, whether we should challenge that principle of the policy, and, secondly, whether we can. These are the two questions. Then, if we do, what do we substitute?

Senator Connolly (Ottawa West): And the second question is not easy.

The Chairman: No, it is not. However, there are other areas we can look at.

Senator Phillips (Rigaud): Mr. Nelson, has your association given any consideration to the question of residents in the Province of Quebec with respect to the provision of the making of gifts between spouses?

Mr. Nelson: No, we have not, sir, so far.

Senator Phillips (Rigaud): You have not considered that?

Mr. Nelson: Not so far. I am sorry. May I elaborate on that for a moment? Our association has not only a national framework but also ten provincial sections, and sometimes I tend to forget that when I answer hastily. Mr. Allison, being posted in Montreal, knows about the activities of the Quebec section.

Senator Phillips (Rigaud): I should like to mention that in so far as the Chartered Accountants' Association of Canada is concerned, though it is a national institution—and this is not by way of criticism, but merely for the record—it did give consideration to the particular problems of the province in relationship to that particular question.

Mr. J. K. Allison (Assistant General Manager, Montreal Trust Company): Of course, we recognize the peculiar situation that spouses are placed in in the Province of Quebec. I was informed this morning that a bill has received first reading in the Quebec Legislature amending the Civil Code; and, again, I was informed that the article prohibiting the conferring of benefits on consorts will be removed from the Civil Code.

Senator Phillips (Rigaud): I have before me Bill 10, to which you refer. Also, Mr. Chairman and honourable senators, I wish to read into the record that I am informed that the

Bar of the Province of Quebec has objected to provisions of Bill 10, and that as of the present the National Assembly of the Province of Quebec does not propose to proceed with this bill.

The Chairman: Mr. Heeney, another general question. There is a very satisfactory provision in this bill which provides for spouses' exemptions, and I think you would not find any place in Canada where there is not support for it.

Mr. Heeney: In all fairness, I think we should have given the bill credit at the beginning for that.

The Chairman: That is what I thought. So, we start off with something that is very beneficial and welcomed by everybody. Then we have the minister's statement that he will lose so much revenue at a time when he needs revenue and cannot afford to give up that much and, therefore he has to replace it somewhere else. He makes his next decision, where he decides he is going to replace it, right within the area where he has created the loss of revenue. That is the first principle that he has made. The second one is that he has said that these rates will produce exactly the amount of income which is lost by reason of these exemptions. It is pretty hard to fault that as a principle, is it not?

Mr. Heeney: I think it is rather difficult to fault that in principle, but it is an awfully complicated way—this is one of our concerns—of going about it, we think, from an administrative standpoint, and from our own standpoint of trying to act as executors and trustees. Our tax people tell me with regard to some of these things it is difficult to see how they are going to be resolved, and from the standpoint of estate administration it will slow up the wheels of progress and will make it more costly, if you take into account the cost of administrators of estates and tax returns, and the estate tax does not provide that much money net; and if more cost of administration is added on the part of the Government and more cost on our part, the meat in the sandwich gets a little thinner all the time.

The Chairman: The moment you say it is a complicated way of doing something, this principle the minister has decided on, you have to find a way, within the limits of the field, to raise the revenue that he is losing. The moment you say it is complicated, the

next question is: Have you an easy and more direct way of suggesting how it might be done?

Mr. Heeney: I think we could make some suggestions that would be helpful.

The Chairman: For instance?

Mr. Heeney: For instance—I do not have one at the moment, but I think perhaps Mr. Allison or Mr. Burn could make a suggestion.

Mr. Burn: In our brief we make a great deal of the fact of this notional shifting of the tax on a trust estate. At first glance, we thought it was inserted to minimize any avoidance or evasion of tax. Upon reflection, we came to the conclusion it did not have that effect, but it does place what we consider a very difficult burden upon trustees, and it would be our submission that the same result could be obtained, as we say in our brief, if this tax is considered to be suspended while the wife receives the benefits from it and then, upon her ceasing to receive those benefits, the tax then descends upon the original estate. This is the same concept as is used under, particularly, our present provincial acts, but to some extent in the federal act—what we call an interest expectancy, where a man dies, and there is an entitlement to receive something in the future and the incidence of taxation is postponed to that time in the future, but still remains with his estate. We suggest this concept should be used in relation to the period when the wife is receiving the benefits; but the control of the administration of the estate always rests with the person charged in provincial law with that control—with the executor.

The Chairman: You used the word “suspended.” Other people have called it a deferral of tax. I am not sure it is either, because it does not carry through completely. If the wife gets outright gifts and spends them, they are not part of the estate when she dies.

Mr. Burn: That is correct.

The Chairman: And what comes into her estate on that theory, under the spouse exemption, is value, and it is value at the time of her death. Therefore, it may be lower or higher. So, you are not necessarily dealing with the same quantum of dollars.

Mr. Burn: We would have no objection to that re-evaluation in the husband's estate at the time the interest of the widow ceases.

The Chairman: You could not go back. It would be even more difficult to go back to the husband's estate, open it up and put some of these things in there at that time.

Mr. Burn: I am simply referring to the case where there has been a trust maintained and for many reasons—I will mention a simple one, the illness of a wife—and it is preferable to have the estate remain in trust. Upon the cessation of that trust the assets remaining in trust could be valued and, for the purpose of determining the rates, if there are benefits given on the husband's death, they could be added back in.

The Chairman: I follow what you say.

Senator Aseltine: I do not think I would like to be an executor.

The Chairman: If you are smart, you will not be.

Are there any other questions?

Senator Walker: Are there any submissions of amendments you have worked out, Mr. Nelson—that your association has worked out to implement your suggested changes?

Mr. Nelson: Do you mean, amendments to the bill?

Senator Walker: Yes.

Mr. Nelson: We did make some attempts to do this, but they are not included in the brief.

Senator Walker: We shall have to give these a great deal of consideration. Would that be helpful, Mr. Chairman?

The Chairman: Yes, it would, but we shall have to test these proposals or suggestions that are being made here by getting the departmental viewpoint on them. We shall have to obtain the department's interpretation, but in the end, mind you, we shall exercise our own judgment.

Mr. Nelson: I suppose, Mr. Chairman, that although we are essentially unhappy about the economic and philosophical aspects of this bill, we are also unhappy about the mechanics of it.

The Chairman: I think you would find most people you question are unhappy about the substantial increase in rates, but if we realize that the money has to be provided then within those limits we have to see how we can make the bill workable.

Mr. Nelson: I suppose one could say that, but I do point out that the damage to the taxpayer does seem to be out of proportion in respect to what the minister gets.

Senator Walker: Whether or not we accept the suggested amendments I think it would be very helpful if they were incorporated in a draft which we could consider.

The Chairman: Do you want to supplement their submission by presenting their ideas in draft form?

Senator Walker: Yes.

Mr. Nelson: We would be happy to take a whack at it.

Senator Fergusson: I should like to ask whether the proposals suggested by Mr. Nelson in respect to the bill that is before us were submitted to the minister at the time representations were made to the minister?

Mr. Nelson: I do not know whether I can answer that accurately from memory. We made quite a number of submissions on this. Of course, the thing first appeared in the form of resolutions in the house, and we wrote to the minister at that time. There were other things in his budget speech. We had several exchanges of correspondence with the minister. Later on we sent him a three page letter under date of December 24, 1968 on the estate tax proposals. We had consultation with the officials of the department, and I think probably in those discussions with the officials we covered in one form or another most of the technical problems that we have outlined. But, you must remember that that was at a difficult stage for them, because it was at the resolution time, and one can only talk at that stage to officials about whether or not the budget resolutions implement what the minister's budget speech appeared to say. You cannot ask them to change policy. So, we did not go beyond that point with those people, but we did with the minister.

Senator Fergusson: I gather that these were not presented to the minister?

The Chairman: Do you mean in the form in which they are presented here?

Mr. Nelson: This is the first time we have made this detailed presentation.

The Chairman: Time is running along, and we have fixed today for the hearing of various representations, and we are certainly going to hear them before the day is over.

Senator Walker: Can we call back any one of these people if we feel that is necessary, Mr. Chairman?

The Chairman: Yes. I suggest that we adjourn now until 2 o'clock when we will continue with the Canadian Bar Association. If we have not finished by the time the Senate sits, we will adjourn again until 4.30 in the hope that the Senate will rise by that time. In some fashion or other we are going to hear all the people who were invited here today.

Senator Phillips (Rigaud): There is some embarrassment for those of us who are members of the Legal and Constitutional Affairs Committee, Mr. Chairman in that that committee is meeting at 2 o'clock. I wonder whether it would be possible to hear the representations of the Canadian Bar Association at 4.30?

The Chairman: Mr. Merriam, I do not intend to impose any restriction upon you in the way of time, but how long do you think your presentation will take? In making that estimate you must allow for a lot of questions from the committee.

Mr. R. Merriam, Secretary, Canadian Bar Association: Of course, that will depend upon the extent of the questions, but I would hope that the committee will agree to give us half an hour.

The Chairman: I will double that. If you say half an hour, then I think you will take an hour.

Mr. Merriam: You are probably more accurate than I am, Mr. Chairman.

The Chairman: In order to be sure that we have a full attendance, because there is a conflict with another committee meeting, I suggest that we adjourn until 4.30 this afternoon, at which time we will sit and listen to the Canadian Bar Association and the Canadian Construction Association.

The committee adjourned until 4.45 p.m. Upon resuming at 4.45 p.m.

The Chairman: Honourable senators, we propose to hear at this time the representations of the Ontario branch of The Canadian Bar Association. Mr. R. Merriam is here to make the introductory remarks and he will introduce the other members of the panel, if I may call it that.

Mr. R. Merriam, Secretary, The Canadian Bar Association: Mr. Chairman, honourable senators, first of all may I say to you how much we appreciate the opportunity that you have accorded us to be present and to make our representations to you, particularly your willingness to sit at this hour of the afternoon so that our men would not have to make a further trip to Ottawa.

The brief which we propose to present, Mr. Chairman, was prepared by the Wills and Trusts Section of the Ontario Branch of the Association.

In a moment we will relate the originally submitted brief to the green covered brief which you have in front of you.

The Wills and Trusts Section of the Ontario Branch is made up of practising lawyers, all of whom have had much experience and are continually engaged in the field of advertising clients with respect to estate matters. They have all had wide experience in that field and are all speaking from the point of view of their practical experience.

The brief which I filed with Mr. Jackson last week, and which was distributed to members of the committee, was the brief as it was originally submitted to the Minister of Finance in February. That was filed with this committee because at that stage the members of our association, who are appearing before you this afternoon, had not had an opportunity to revise it in the light of certain amendments made in the House of Commons and also because they did not have time to make the few additions to it that they had come up with as a result of further study which they had been able to give to the bill subsequent to preparing the brief for presentation to the Minister of Finance.

The brief, then, that you have had distributed to you this afternoon in the green covers, which I see all honourable senators now have, is the brief to which we will be speaking this afternoon. It is not our intention, Mr. Chairman, unless you so direct, to read the brief, but we would like to speak to the brief and, for that purpose, I would like to introduce to the members of the committee, if I may, Mr. J. Alexander Langford of Toronto, who is the Chairman of the Wills and Trusts Section, Mr. Fredrick D. Baker of Toronto, who is the Vice Chairman of that section, Mr. F. Douglas Gibson of Toronto and Mr. Francis J. Hamill of Toronto. All of these gentlemen are members of the Law

Society of Upper Canada and are practising lawyers in Ontario.

Mr. Chairman, I should now like Mr. Langford to speak to the brief. I am sure that, if there are any questions that honourable senators wish to ask at any time during our presentation, one or other of the four gentlemen whom I have introduced will be only too delighted to answer them for you.

Mr. J. Alexander Langford, Member, The Canadian Bar Association: Mr. Chairman and honourable senators, before beginning I would like to deal with the question as to whether the National Bar Association will be presenting a more general brief. The Wills and Trusts section is normally dealing with provincial matters and so it is in ten sections. The section is not too active on the national level but when the Estate Tax Act is being amended something has to be done. I do not think there will be any other submissions by the Bar Association. We will be talking to you from the experience of common law lawyers and we must defer to civil law lawyers in other matters because we do not pretend to be authorities on civil law. We would have to refrain from comment on that aspect of it.

This purports to be a brief presented by The Bar Association and it is true that it is being presented by The Ontario Branch.

The three parts into which we propose to divide our presentation are based on a logical division. First of all we would like to address our comments to the breaking-in period involved in this new legislation. It is quite true to say that as far as planning is concerned lawyers are going to take quite a while learning how to apply this. There are a few specific matters in the bill which in our submission ought to be the subject of change having regard to that necessary educational period. I am going to address you on those factors.

Secondly, when we have finished being educated in our profession there still remains a number of testamentary provisions which in our submission people need to be able to use and which the present bill renders unusable by imposing onerous taxes. Mr. Gibson will present submissions dealing with a number of small technical changes which we would suggest should be made in order to promote the use of these provisions.

Finally there are some very technical matters which may be the result of oversight or may be deliberate. In any event in our submis-

sion they will work out in a capricious manner and in our submission there are easy amendments which can be made to improve them. Mr. Baker will deal with those.

We abstained from making comment on the policy of the bill in that we felt that such comments should not be made about these matters by an association which includes government tax lawyers as well as non-government tax lawyers. Our association includes partisan supporters and partisan opponents of the government so we do not feel it is expedient to enter into the politics of the bill. We are simply dealing with the ordinary problems which ordinary lawyers are going to find in practice.

Now we would first of all submit on this question of the breaking-in period that the preparation of wills is a pretty everyday task for an ordinary lawyer. All of us can think of matters which comprises a field for experts or for a few lawyers, but the drawing of wills is an everyday matter for ordinary lawyers and for notaries across the country. We have to assume therefore that there is going to be a certain passage of time before these people can adjust themselves to the new provisions. Ordinary lawyers, and no one of us claims to be very different from that, make use of well-known texts from which we can draw precedents or we have our own collection of precedents. If you think about it all of these sources are now out the window and we have to revise them. The authors of well-known texts are presently busily engaged in a revision. We are all reviewing our own sources and our own precedents, but this will take time. When a client comes in to see us we will have to say we have not had time to deal with all the implications yet and when the bill becomes law we will still be in that position for a while. The best judgment on these matters must mature over a period of time.

If we are not fairly generous in the way the bill is drawn in allowing a certain period of time for education, then I would submit that the minister's intentions are not working out. He really intended when husbands leave property to wives there should not be tax on that property, but unless the gift is drawn in just a certain way the intended exemptions will not apply. The minister really intended to deal fairly and generously with children who receive modest gifts, but unless the gift is drawn in a certain way the result will not be achieved. There are two particular points which are involved in this whole matter. The

first is the provision now contained in the bill in the last clause, Clause 13 of the bill which deals with the problem of implementation. It is a transitional clause and sub-clause 2 says, and may I give you a brief summary of it, that in the case of people who die prior to August 1st of this year the estate will be either taxed on the basis of the old exemptions on the basis of the new exemptions. That is not quite accurate. It really says that the old exemptions have to be more than \$20,000 bigger than the new ones before they are allowed to use the old ones. It is not an even comparison. We suggest it is not generous enough. In the first instance August is too soon. We would suggest that the Treasury would not really be hurt if perhaps it was extended for one year after the date of coming into force of the bill.

Senator Phillips (Rigaud): Extended by way of option?

Mr. Langford: By way of option so that you could use either one or the other. We are not suggesting you could just use the old bill rather than the new bill. The new rates will still apply. But the new exemptions with which the minister has concurred do require technical language and for a while this technical language is not going to be found in wills. At least one should have the benefit of the kind of exemptions one could get before without worrying about the new technicalities. In many places across the country hundreds and thousands of wills are gathering dust awaiting the death of the testator. Some of these cannot be changed because the people have become senile and cannot change the will. These wills were drawn before the budget, and they were not drawn to take advantage of the provisions. I suppose most of us could endeavour to get our clients to come in to change their wills, but we are a little diffident about doing this because it might appear that we are calling him to change his will so that we could ask him to pay us another fee. We really are a little diffident about that. To some extent we may be able to do something about it, but sometimes people will not be able to change their wills. You can count on it that for years and years wills will come into force which were drawn before the budget and do not take into account any of these provisions.

To a very limited extent in the common law provinces it is possible to change a will after someone has died. The limited extent is

this, that if all the beneficiaries agree, without exception, and they are all adult and capable of agreement, then you can make a change. If some people who are beneficiaries are not adult or are not born yet, we have in all the common law provinces, save Newfoundland, Variations of Trusts Acts which permit the court to give consent. The condition is that if all the adults agree, the court can give consent for minors or people under disability. Therefore, in a very limited class of case it is possible to change a will after death.

We would submit that if a will is changed after death and before the time of assessment, the tax ought to be applied on the will as changed, giving effect to the changes. It should not be, once you have legally changed a will, that you should apply the tax to what has become a purely artificial situation, the text of the will at the time of death. I would be prepared to advise a client that he could win an appeal if the will had legally been changed and the federal department wanted to tax on the basis of the text of the will before it was changed.

Senator Aseltine: Is there any legislation allowing that to be done? I do not know of any.

The Chairman: Yes, we have a Variations of Trusts Act in Ontario.

Mr. Langford: I think you are from Saskatchewan, senator, and you have it in Saskatchewan.

Senator Aseltine: Yes, I guess we have.

Mr. Langford: I do not know whether it is always called the Variation of Trusts Act, but I know it is so called in most of the provinces.

The present bill does contain something like this. We did not think this up on our own. The present bill, again in a very limited class of case, seems to envisage the possibility of change, and in the same section 13, the very last paragraph of the bill, is a very hard clause to interpret, but we have come to the conclusion that what it means is this: Suppose there is a man who dies, leaving his property to trustees to pay income to his wife for life. That is the case where the minister has said, "No duties." But let us suppose the will goes on and includes other provisions the effect of which is to take away the exemption, or there is a clause which would lower her income if she married again, or to permit the trustees

to dip into the capital for the benefit of children, the presence of the other clause would take away the exemption, and the clause seems to say that in the case of persons dying before August 1 and in the case of gifts to a wife, if people are able to make a legal change, the tax will be applied as before. By inference, the draftsmen are saying that in any other sort of case, say after August 1 or to anybody else except the wife, you are not allowed to change it as far as they are concerned, and they would intend to tax on the text of the will as it stood at the time of death.

I suppose another point to draw to your attention is the possibility of anything being a fact. With regard to dependents' relief or family maintenance legislation, it may be the case that not everyone agrees to vary the will, but the court orders that, notwithstanding what the will says, payment shall be made in some other manner. That is the way in which a will can be legally varied, but it is our submission, regardless of the manner of the variation, if the provincial law says a property is going to be distributed in some way different than the way in the will, it is the actual manner of distribution which, in our submission, should govern the tax. So we would suggest replacing that last paragraph by a declaration of rights provision by which it would be simply said in perpetuity where the provincial law requires that the property be distributed in a particular manner and a manner different from the manner laid down in the will, that should be the manner which governs.

The Chairman: Are you suggesting that under the Dependents Relief Act of Ontario that a wife who was not adequately provided for, having regard to her position in life, under the will that if she applies to the court and the terms of the will are varied so as to give here what the court thinks is an adequate amount of income, that that would not qualify under 3 (1) (a) of the bill?

Mr. Langford: It is our opinion, Mr. Chairman, that it does not necessarily qualify under the wording contained in the bill. We believe, however, that if that were the exact circumstance the department is presently minded to interpret the statute in such a way as not to impose a tax that way. Their intention might some day be upset by a decision of the court which does not care much about their intention, but cares about the wording of the bill as you pass it.

The Chairman: Would not that be property passing on the death of the deceased to the wife even if the court amended the will in that regard?

Mr. Langford: Mr. Chairman, it is a principle I think of statutory interpretation that where there is a specific provision that says something is covered, inferentially other cases not mentioned are not covered. In this last subsection there does seem to be the possibility of giving effect to a limited class of change. Inferentially, the bill seems to say, "We will not give effect to any other sort of change."

The Chairman: Except the purpose for the change you have referred to and for which you are trying to make your inferential argument, does not fall in the class of things or involve any principle that would be pertinent to 3(i)(a) and the application of the Variation of Trust Act.

Mr. Langford: You mean that the Dependents Relief thing does not seem to you to be logically related?

The Chairman: It is not in the same class of case. It is like saying in the interest of helping people, because this is new, why wait until a certain period? We will let them take the old exemptions or the new, whichever gives them the greatest benefit.

Mr. Langford: Well, we are suggesting, Mr. Chairman, that for a great many years and perhaps to the end of this century there will continue to be wills coming into force which were drawn before the budget.

The Chairman: All I meant was that this is not an amendment of the will where they say you can take the old exemption or the new. Under the variation of the trust the court is amending the will.

Mr. Langford: Yes, Mr. Chairman. In connection with the first of my two suggestions, I draw your attention to draft legislation which we provide with our brief. Unfortunately we do not have enough copies for distribution for everyone. We did not realize the great aptitude of the members of the committee for statutory language. We had enough copies of our brief but not this one. We only had 10 of these. We are having more prepared and they will be filed with the clerk tomorrow.

The Chairman: May I interject by saying that the committee will order the copy of this brief and the appendix will be appended to the transcript of the proceedings today.

(See Appendix "E")

Hon. Senators: Agreed.

Mr. Langford: We have endeavoured to go beyond merely criticizing, and to the extent that our language is deficient we of course recognize that you have available to you far more adequate statutory draftsmen. We think these amendments will meet our point. We ask our colleague, Mr. Gibson, to deal with the rest.

The Chairman: Are you or Mr. Gibson going to deal with the suggested language in the draft that would deal with these points that you have raised?

Mr. Langford: Mr. Chairman, I was proposing to file that matter generally.

The Chairman: You might just refer to which numbers you mean. You have paragraph numbers here.

Mr. Langford: Yes, my colleague, Mr. Hamill, Mr. Chairman, has spoiled my proposition to you. He says that for those two particular points we have not been helpful. We seem to have been helpful otherwise, but for those two particular points we do not have language. However, they do deal with specific provisions in section 13 and, we submit, amendments can easily be drawn and we will file them.

The Chairman: All right. We will now hear Mr. Gibson.

Mr. F. Douglas Gibson, Member, the Canadian Bar Association: Mr. Chairman and honourable senators, I stand here today not as an expert on taxation but as a simple solicitor who is concerned with the drafting of wills, and, if the drafting of wills appears to you to be a subject which is not properly the concern of federal legislation, I would be quick to agree.

I feel a substantial degree of empathy with my confrères in Quebec on this particular point in this bill. I submit that there has been a substantial effect suggested on the drafting of wills by the tax which is proposed in the amendment to the Estate Tax Act. I urge upon you that you should be very circumspect when you, in the name of federal tax legislation, bring in a provision which can be almost confiscatory to persons when they are making a decision which fundamentally deals with the subject of civil rights.

The four areas that I want to address you on for a few moments, do, I suggest, deal very substantially with the fundamental principle of civil rights, the right of a citizen of this country to draw his will. When that citizen comes before a solicitor such as myself, he first considers the assets and the affairs with which he must deal. He then considers the circumstances of those persons whom he wishes to benefit, giving particular consideration to those persons to whom he owes a moral obligation. As many of you are aware, there is substantial law dealing with a man's duty in that regard and the courts will give consideration to whether he has discharged his responsibilities effectively in the case of dependent children or his wife.

In that regard, I would first ask you to consider for a few moments the subject of remarriage. This question has been raised previously and has been dismissed. I urge you to give further consideration to it. I have suggested that this is possibly a matter of civil rights and that you ought not to consider it, but let me hasten to say that I will now assume that it is your full prerogative to legislate on the subject of remarriage, even though it is a matter of civil rights. I hope that I can persuade you that even in that case it is inappropriate to deny that consideration to the citizens of this country in drafting their wills.

I can give you a few simple examples. Consider the wealthy young wife who has a husband and young children. I think it is certainly usual in my experience, and probably the experience of most of us, that a wife in those circumstances will leave a substantial benefit to her husband, usually in the nature of a life interest with a substantial benefit to her children as well. In my experience it is very common for the interest of the husband to be reduced or extinguished in the event of re-marriage.

Senator Isnor: What percentage would come under that heading for a rich young widow?

Mr. Gibson: I couldn't actually give you statistics anymore than I could give names or addresses or references, but I have had the experience.

The Chairman: I think it is a reasonable assumption that there are such cases.

Mr. Gibson: Well certainly there are such cases and another not uncommon circumstance where the same conditions prevail, I

suggest, is in the case of the re-marriage of a man to a woman considerably younger than himself with the resulting conflict of interest, upon his death, of the widow and the children of the former marriage. Frequently, whether that man is wealthy or not, he must consider the conflicting moral claims, and there is a moral swing that may take effect on remarriage.

If I am speaking more in favour of the wealthier at the moment I do not blush for it. They are entitled to our concern.

The Chairman: It is nice to hear a voice in their favour for a moment.

Mr. Gibson: And if I do not blush when I am speaking about the wealthy, may I say that I burn when I see unjust interference with the estates that are substantially more modest, and this is where the damage is going to be done, and I think I can prove it to you.

Consider a fourth example: take a man whose estate is not sufficient to set aside trusts that are adequate to look after both the wife and the children. I have spent many hours with such testators where they have tried to make up their minds as to what they should do and where they have sincerely tried to search out their moral responsibility; remarriage frequently is the grain which, when placed on the scales, swings the balance in favour of the children. Gentlemen, you cheat if you place a legislative thumb on those scales to swing the balance.

Now, if I am correct there, I have given you examples which merit consideration. If you swing policy considerations back in favour of allowing an exemption, notwithstanding the remarriage clause, then what goes against it? Is it the scheme of the bill? If the estate is going to be reassessed on death, I suggest it could be equally reassessed on remarriage; it might be a little more difficult, but it could be done. We have drafted legislation that would do it and have filed it with the committee.

Let me go on and put another point to you, honourable senators. Often the question of administrative difficulty is raised. I regret that here I am going off the track slightly, but the Departments of National Revenue and Finance should be concerned with the administration of the Income Tax Act and should be as concerned with the alleviatory provisions as they are with the other provisions.

What happens when you look at the other side of the coin and the question of administrative difficulties arises? Now, a subject came up this morning and I would like to draw your attention to it and to the provisions of the Estate Tax Act which deals with it. The first I wish to refer to is Section 3(1)(1) which provides that any

property disposed of by any person on or after the death of the deceased...

(ii) under the terms of any agreement made by the deceased for valuable consideration given by him providing for the disposition of such property on or after his death, whether or not such agreement is or was enforceable according to its terms by the person to whom such property was so disposed of;

that is the section which would bring into effect and make subject to tax gratuitous payments, especially to a widow. The value of those payments could be capitalized and included in the estate and made subject to estate tax.

We presume and we hope that, even though those payments might be considered as not absolute and indefeasible, they would be subject to the exemption. There is a possibility that a gratuitous payment might be made or increased subsequent to death. Is there not that same administrative difficulty? How are we going to bring that in and make it subject to tax?

Our draftsmen had no trouble in providing in section 12(5)(b) that:

(b) within four years from...

(ii) the date any property is disposed of under a disposition or agreement described in paragraph (1) of subsection (1) of section 3,

in any other case, re-assess or make additional assessments, or assess tax, interest or penalties under this Part, as the circumstances require.

I suggest there is as much a duty to accept administrative difficulties if civil rights and the just rights of the citizens of this country require it, as it is to make the effort to collect taxes.

The second subject I would like to direct a few remarks to is the matter of the charitable exemption which was also referred to this morning. May I go back to the present Estate Tax Act and refer briefly to the exemption

that is allowed. Under section 7(1) (d), exemption is allowed to the value of any gift made by the deceased, whether during his lifetime or by his will, where such gifts can be established to have been absolute and indefeasible, and then goes on to describe charitable organizations.

When the Estate Tax Act was first brought into force many of you will recall there were strong representations made by the charities of this country urging that the charitable exemption be allowed on a residual gift to a charity under a will where there is a life estate to a widow or life tenant, even though there is a power to encroach on capital. The answer was that if there is the power to encroach on capital in favour of a widow or life tenant, the gift to charity is not absolute and therefore it will be taxed. The argument that that could not be made subject to the exemption was, first, administrative difficulty, and, second, that it was contrary to the whole tenor of the Estate Tax Act. Those arguments were followed and they prevailed. The result was that the charitable exemption existed in respect of bequests made immediately on death or bequests which were to take effect on the death of a life tenant, so long as there was no power to encroach which could defeat that gift.

Ironically we now find ourselves in the position that the estate tax bill proposes an amendment which overcomes both those objections. Surely, the policy is established by the exemption if it is made at the date of death, so why not an exemption if it is made at the death of a life tenant? It appears likely and there is a strong possibility that rather than increasing that exemption you have taken it right away; and it is entirely probable, on the reading of the present estate tax bill, that the only charitable exemption that if allowed is the exemption that is made by a testator to take effect at the date of his death, because if the testator leaves a life estate in a fund to his widow and gives a power to encroach on the capital to the widow, that is exempt and there is no tax. But the fund that passes on her death is taxed not in respect of his death but in respect of hers.

To obtain the exemption it appears that you would have to bring that charitable bequest into property passing under her will. Probably this can be overcome by giving her a broad power of appointment. But why? This is not a difficult job of draftsmanship. Was it overlooked? Is it intentional policy? I

do not know. Whereas you have the opportunity to grant the charitable exemption which was previously refused on the basis of circumstances that no longer exist, you have instead made a very substantial reduction in the charitable exemption under the Estate Tax Act.

Senator Walker: Has the minister made any reply to your submissions to him in that regard?

Mr. Gibson: None that I am aware of.

Senator Walker: Before you leave that, have you a corrective amendment?

Mr. Gibson: We have an amendment. It is No. 4 on page three, the third paragraph of the chartreuse-coloured brief. It is not complete. This is something to which we will be glad to direct our attention and improve.

The third area is the matter of dependent children, and this is a little difficult. I am not here referring to the deductions that are allowed for children, \$10,000 plus.

The Chairman: Mr. Gibson, looking at that amendment, could you put it the other way? This is one of those "deemed to be" provisions; that is, the widow who is receiving a life interest and then there is a gift over, maybe to a charity. That is a "deemed to be" situation, a "deemed to be" gift by her.

Mr. Gibson: That is correct.

The Chairman: If you restricted the scope of what it was deemed to be and for what, you would accomplish the same result as you are suggesting, would you not?

Mr. Gibson: Yes, I think you would. Unless somebody is intentionally trying to cut out charities, my submission is that the test here, assuming it is the husband, is that he should be entitled to select the charity himself; it should not be left to even the good will of his widow or someone else.

The Chairman: If the will provided a residual benefit to a charity you would say the "deemed to be" gift would exclude it?

Mr. Gibson: That is correct.

The Chairman: You would exclude such a residual benefit?

Mr. Gibson: Yes, that is correct.

The Chairman: And therefore the exemption would apply?

Mr. Gibson: Yes.

Now I turn to the question of dependent children. In normal cases this will not be a problem. I will refer to the husband dying, leaving an estate for his wife. It could, of course, be the reverse. The husband can leave an estate to pay income to a wife for life and so much of the capital as the trustees think is appropriate, and on her death divide the estate amongst the children, or whoever he likes. Where the husband has dependent children who require maintenance, education and necessary assistance, in the majority of cases the husband can rely on his wife to do that. The cost of this will vary with the standard of living, with the people and with the finances that are there. Again, however, I would point out that this is a most serious problem in the case of the modest estate. Where the estate is large enough to set up a separate trust to maintain the children, this may not be a problem; but in those many estates where there is a balancing, it becomes a very serious problem in the not insignificant instances when the husband or the wife is unfortunately not able to rely on the discretion of the surviving spouse to apply funds properly in the necessary maintenance and education of children.

I have seen those cases. I have had to draw wills for those cases. And I am sure that most lawyers in this room have had to provide that the discretion must be there in the hands of the trustee or someone else to step in and apply funds for the maintenance and education of dependent children while they are dependents.

The effect of that provision under the Estates Tax Act is that if the discretion is given to the trustee to apply money, even for necessary maintenance and education of dependents, the entire fund will be subject to tax. It is going to hit the modest estate which cannot afford it.

Once again we have drafted legislation that will exempt that trust from tax, so long as the discretion of the trustee is limited to applying necessary maintenance and education for dependent children. It may be that that is important, it may be that you are going to lose some taxes. If necessary, I would rather have it that way and I think it is not unreasonable, but I would be glad to give it up. I will even accept a provision that imposes a 50 per cent tax on everything that is paid out for the children and exempt the trust, exempt the trust that is set aside for the widow, before a discretion is given to the

executor to apply funds that are necessary for dependent children.

Senator Phillips (Rigaud): Are you saying that is the law, or that the law may be so interpreted under the present act?

Mr. Gibson: There is no doubt in the present act that if the trust is set up to pay income to the widow, with discretion to pay capital to the widow, but if there is power to reduce that fund, to apply that fund, paying to anyone else, including dependent children, the entire fund will be taxed.

On page 7A of the appendix we have set out a provision which will meet this objection.

My final point deals with dependents who are infirm. Here again I urge you to accept my proposition that the draftsmen of this legislation had never stood in the feet of executors or testators. They have never considered the actual working out of these problems, because what could be more unworkable than what I am now about to refer to?

They give a very generous exemption, if it is calculated in dollars it is generous, for infirm children—\$10,000 and \$1,000 a year until the child will be 71. There will not be 10 per cent of the cases where it is needed, but it will be obtained. Why? If you need a trust for an infirm child, if you need a trust, is it logical to assume that you are going to be able to pay it over when the child is 40? If so, there is no need for the trust. In today's world in most cases it is not going to be a matter of physical but of mental infirmity so that he just cannot administer his own money.

Senator Aseltine: How would you draw the will to cover that event?

Mr. Gibson: I would require the will that is drawn to pay it over. The normal provision in setting aside a trust is that you say that "a trust will be set aside, the annual income and so much of the capital as is required to meet the needs of my infirm dependent child." On the death of that child any money left over will be paid to his issue, if there is issue—and the chances are that there will not be—our to my issue.

Now, I suggest that that trust should be exempt to the extent that it confers a benefit upon the dependent children. If that trust which I have just dictated was put in a will today, it would be taxed. The entire trust would be taxed under the Estate Tax Bill.

How many of you who have ever drawn such a clause would have drawn one that would be exempt? If you were in my position, talking to the parent of that infirm dependent child, and you were faced with a choice in which you could have a fund that will be secure and managed by trustees for the lifetime of that child, but it will be taxed, or you could set aside a fund to look after the child until he is 40 years of age and then give it over to him, what are you going to do? You are going to pay the tax, because if you do not the chances are that you will pay it over to him when he is 40, and he will be mentally incompetent so that it will be paid into the hands of the Public Trustee, and when that child dies, because he is mentally incompetent and cannot make a will, it will pass on intestacy.

Mr. Chairman, I hope I have not sounded unduly overbearing or critical. I am certainly not critical of this committee or indeed of any part of the house.

Senator Aseltine: Do you think that your amendment to clause 7(1) (a) will cover that point?

Mr. Francis J. Hamill, Member, the Canadian Bar Association: There is an element of policy involved in this matter, so we did not draft an amendment, pending discussion with the Minister of Finance.

The Chairman: Which one are you talking about now?

Mr. Gibson: This is the amendment I have just been talking about. We do not have a proposed amendment on this particular point.

Mr. Hamill: The dependent child would be covered by 7(1)(a) and 7(1)(b) while the widow is alive, but not beyond that point.

Mr. Gibson: Mr. Chairman, and honourable senators, I have referred on a number of occasions to modest estates. It may be in the minds of many of you that there are in fact not many of these modest estates. Are there many estates where there is a life interest to a widow with the residue passing over to children? If there are many, do they fall in this area which cannot afford to be taxed if tax can be avoided? We have available to us some figures which are to be found in a study prepared by the Ontario Committee on Taxation. This table is prepared from information

on file in the Ontario Succession Duties office, and it relates to the proportions of estates of various sizes which were left with a life interest to a widow.

Of estates of less than \$50,000, 24 per cent were subject to that provision. Of estates of between \$50,000 and \$100,000, 32 per cent were subject to that provision. Of estates of between \$100,000 and \$150,000, 41 per cent were subject to that provision. Of estates of between \$150,000 and \$250,000, 74 per cent were subject to a life interest to a widow with the residue passing on her death. For over \$250,000 it was 84 per cent.

It indicates that a substantial number of the estates of citizens of this country that are in the neighbourhood of \$300,000 and less will have to deal with the very problems that I have referred to in these four areas. My submission is that these are areas of property and civil rights where the testator ought not to be injured unnecessarily. I submit that the present bill does do undue and unnecessary injury. I submit that the draft amendments which we have filed can remedy the areas to which we have objected.

Thank you, sir.

The Chairman: We will now hear Mr. Baker.

Mr. Frederick D. Baker, Member, The Canadian Bar Association: Honourable senators, there are two points that I would like to deal with; they are not very difficult, but they are very fundamental. The first point is in your index as item No. 7 and it deals with the loss of foreign tax credits. You may recall that the trust company people this morning were concerned with this point.

May I just illustrate what we are talking about when we say foreign tax credit? A Canadian citizen, for example, dies owning New York City bonds which are in New York. Canada wants to tax them and the United States wants to tax them. If they both tax them at 50 per cent rates, he might just as well not have had the asset to begin with.

Civilized countries have got over this difficulty. They have established rules, many of them by convention, that one country taxes and one country gives up. In the case I have cited, Canada would not tax. The civilized rule would be that the United States would tax because the asset was situate in the United States.

Now, the old Estate Tax Act did fair justice to this. If the American Government tax-

ed, the Canadian Government gave us a reduction on that asset, based on the fact that the bonds were situate in the United States.

Now, the new act is not able to do this, or the draftsmen have not been able to do it, and the reason for it is this: we envisage that most estates will have the tax deferred until the death of the wife. So it is awkward. You have the American tax payable when the husband dies. You have the Canadian tax payable ten years later, when the wife dies. How do you get your foreign tax credit? Well, the drafters of the legislation apparently felt that the problem was insuperable and we have in fact a bill which has no provision at all for this civilized thing that I call the foreign tax credit.

The Chairman: Mr. Baker, if the Canadian, in those circumstances, had a holding company into which he put all his foreign securities, the problem would not arise.

Mr. Baker: Sir, you are absolutely right, but surely that is not a total answer to the matter of principle.

The Chairman: The effect is total.

Mr. Baker: This is true, but, if a person has 100 shares of I.B.M., does he want to incorporate a holding company to hold those shares?

The Chairman: He might find somebody else with the same problem. There can be conglomerate companies.

Mr. Baker: Well, he could buy mutual funds.

Senator Walker: Mr. Chairman, surely Mr. Baker is talking about ordinary people.

The Chairman: Any person can do it.

Senator Walker: Form a company?

The Chairman: Sure.

Senator Beaubien: He can put it in the bank in a nominee's name. He can get the bank to hold it for him.

Mr. Baker: With the greatest of respect, I would suggest that the nominee name is not effective. The stock is still situate in New York City. Surely the better answer is to find a way to give foreign tax credits as we did before.

We have devised a rather crude and primitive way of doing this, but we would rather see a crude and primitive way of getting a foreign tax credit than the anomaly—and I

call it an uncivilized anomaly—of getting none at all. The crude way is simply to say, "How much did you pay to the United States on those bonds, when your husband died? We will give you a total credit for it."

It is crude, but we think it is better than no tax credit at all. May we go to another point?

Senator Phillips (Rigaud): By that you mean ultimate tax credit?

Mr. Baker: Total tax credit. You make a note of what you paid to the American Government when your husband died and then you would get it back.

My second point is item No. 10 in your index and once again may we start by looking at the matter of principle. I find I get a headache if I look at the act without seeing it as a matter of principle. We are talking about the relationship between gift tax rates and estate tax rates, and I interject here that this is the only time in our submissions to you that we are discussing principle rather than technicalities. Here we have strayed somewhat into the question of rates.

What is the principle? What did the drafters try to do with the gift tax? What they are trying to do is to guarantee the principle of equality so that the man who passes his assets from father to son, from generation to generation by lifetime gift should pay roughly an equivalent tax burden to the man who does it by his will. Is not this what they tried to do? We approve of that; we think it is fair and we think it is equality. But the fact is that the department in its enthusiasm to make it fair has made the burden of lifetime gifts so far as gift tax is concerned so intolerable that they have blended the two systems by simply killing off any possibility of making gifts. If you compare the gift tax rates on \$100,000 with the equivalent death duty rates you will find that the gift tax rates are 10 per cent less. At that point you may ask me what am I talking about because the rationalization is a fair one. But the point is, and it is easy to miss, that you pay the gift tax rates at an earlier point in time than the death tax rates.

Let us illustrate by taking the case of a man who is a farmer or a businessman and who has a son coming along; it is a broken home and the spouses want to give a gift to the children. These are valid reasons for giving gifts, perhaps not tax reasons, but lifetime family business reasons. He comes to the lawyer and tells him what he wants to do and

the lawyer says "Hold it, there is no way I will permit you to make that gift. The tax incidental to it is so appallingly onerous that there is only one thing to do. Tell the young man to wait until you die." Let us assume that man is 40 years old with a life expectancy of 30 years and as we know money doubles itself every ten years at 7 per cent. So the tax gift burden on giving it away at age 40 is three times the estate tax burden.

Now, what is the solution? Our solution is a double one, and the first is rather ingenious. If the act provides when the gift tax is brought forward on the person's death to be added to the estate tax, why not give the man who paid the gift tax on his lifetime gifts a credit of 5 per cent per year for the 30 years for the amount of gift tax he prepaid, and this would take the pain out of the man who really wanted to give a gift for the best reason. He would go into the lawyer's office and the lawyer would say "Go ahead and do it because the tax penalty is not that bad. You will get 5 per cent per year on your money."

Senator Phillips (Rigaud): Why not the rate of interest applicable to Bank of Canada rates rather than at the old rate of 5 per cent? I would like to hug you for that suggestion you have made. I referred to that in my speech because there is no correlation between the gift tax rates and the Bank of Canada rate. I am in complete agreement with you.

Mr. Baker: One last point. We take it as a valid principle that where an older man wants to give money to a younger man, that property will be better used and more economically; it is in the hands of more active and dynamic people. Surely, the policy of this Parliament should be to encourage this sort of thing rather than to discourage it through its taxation policies?

Senator Molson: We were told that was speculative the other day, if I am not mistaken, Mr. Chairman, by Mr. Brown.

The Chairman: Mr. Brown, was it?

Senator Molson: I think he said that was speculative.

Mr. Baker: I will excuse myself now, thank you very much.

Mr. Hamill: Mr. Chairman, honourable senators: I am going to deal with points 2, 8 and 9 on the index of the brief.

The first problem, No. 2, is the double one. In the estate of the widow, presuming that

she is the surviving spouse, where there is a lifetime deferred trust set up by the husband, the intent of the act would appear to be to issue one assessment, and if there was a conflict between the residuary beneficiaries of the wife and the residuary beneficiaries of the husband, the executors, and even worse than that, there could be *inter vivos* trusts involved, the trustees would be faced with the problem of apportioning the combined tax payable on the death of the wife.

A very simple example: the wife has \$100,000 and the husband has \$100,000, and tax is paid on \$200,000. Nobody has any real problem; half of it is passed each way. But supposing the husband has \$100,000 and the wife has \$400,000, or vice versa. The first \$300,000 has lower rates of tax available before you come to the flat 50 per cent. Is it right that the whole \$300,000 lower rates should be applied against the wife's, or should it be split up three-quarters to the wife and one-quarter to the husband?

Take a situation where all of the husband's assets are entitled to provincial tax credits and none of the wife's are entitled to provincial tax credits, how do you apportion it? We feel this is not a problem to foist on the solicitors of the estate. It is a problem which should be faced by the department which is administering the complex act, and they should take the rough with the smooth and take the complex case with the money.

The second point is the horrible question of the surviving spouse who has a tax deferred trust conferred on him or her, and then remarries and survives a second spouse, again has a tax deferred trust conferred and dies leaving an estate of her own. We have all three estates aggregated. I am, for the moment, the first husband to die and I leave my modest estate to my wife and children. She marries a wealthy man who gives her a life interest and leaves his residue to his children by his first marriage. My children are going to get taxed on the aggregate value of the estate because of his will.

We have devised in pages 2, 3 and 4 of the appendix an amendment which takes care of that by combining the estate of the surviving spouse with each of the pre-deceasing spouses for the computation of tax on them, and all three for the computation of tax on the wife. Once again the advantage of having an assessment apportioned by the estate tax office will be apparent.

The Chairman: If I could interrupt for a moment, is what you are saying that where there is a "deemed to be" gift on the death of the donee spouse that should be treated as an estate in each case where there is a different donor but the same donee spouse?

Mr. Hamill: The same donee spouse.

The Chairman: Each one you would treat as though it were a separate estate. One thing you are doing there is lowering the amount of tax, because there would be lower rates applicable whereas if you lump it the higher rates might well apply.

Mr. Hamill: My contention is that these lower rates should apply in the case of...

The Chairman: I am not arguing it. I am just saying that.

Mr. Hamill: This is the effect. The estate of the ultimate surviving spouse is aggregated with both pre-deceasing spouses.

The Chairman: What you say is that the children of the first donor to die should not be saddled with an extra burden of tax because the widow has made a successful second marriage in which there is quite an accumulation of wealth.

Mr. Hamill: Yes, sir.

The Chairman: Emotionally it seems to make sense.

Senator Beaubien: If the tax were applied at the time the two husbands died there would be a separate tax in each case, so the Government would not lose anything. In other words, the tax payable when the first man died would be \$100,000, and if the second husband died and left \$1 million you would pay on the \$1 million, so the Government loses nothing.

The Chairman: The point is that since this would be a spouse exemption when the donor dies, to the extent of the spouse exemption the widow takes that and there is no tax payable at that time.

Senator Beaubien: That is right.

The Chairman: The tax on the donee only falls in when she dies. By that time she may have accumulated three husbands, and in the second and third marriages accumulated very wealthy resources, but the burden of higher tax will affect even the first one, which may be a quite modest estate.

Senator Walker: The first residual beneficiary.

Senator Molson: Why should not the rate be established the moment an estate is created? If I do not survive until tomorrow morning, do they not add up all the coins in my piggy bank and say what the rate of duty is?

The Chairman: You get this argument that the evaluation is at the death on the donee. If the assets making up the trust go down, that helps in the tax rate; if they go up it hurts.

Senator Molson: At the rate of inflation in these days I think I would be prepared to take a gamble.

The Chairman: You would assume they would go up. You would be surprised how many people will always buy at the wrong time and sell at the wrong time.

Senator Molson: In fact, if the widow were very smart she would have "blown" most of it anyway.

The Chairman: That is right.

Senator Walker: Just by the way, Mr. Chairman, that is a new description of a piggy bank!

The Chairman: I do not think that we can put that into any amendment that you suggest.

Senator Walker: Put it in quotations.

The Chairman: I do not think the law recognizes quotations or commas.

Mr. Hamill: The second point is the device which has been used in the bill to determine the amount of provincial tax credit that will be available in a trust which has been deferred until the death of the surviving spouse. The draftsman was conscious of the fact, I think, that trustees could manipulate the assets of the trust so as to secure the provincial tax credit under the present rules on the death of the surviving spouse, when of course there would be no provincial tax payable. So the device by section 9(9) of the act, as amended by the bill, is to relate the amount of the credit to the state of the assets on the death of the first spouse to die.

There is an additional application which I find rather unjust and that is to create a new class of province. We have prescribed provinces that are entitled to a 50 per cent tax credit, and those are the fee taxing provinces. We have designated provinces, which are

entitled to an additional 25 per cent, British Columbia. Now under the bill we have appointed provinces, and the intent, it would appear, is this. If I were to die today, domiciled in Ontario, Ontario is an appointed province, presuming the act to come into effect, and if I leave a trust for my wife, so that the tax is deferred until her death, and I leave only that, and after this Ontario goes out of the tax field, Ontario no longer being a designated province, Ontario being an appointed province, so until my death the computation of the tax credit available is based on the fact that Ontario is not at that time a taxing province. The net result is that the full federal tax would be payable, notwithstanding that full provincial tax has been paid on my death. I think that this as it stands is wrong and the act should certainly be reworded to delete references to appointed provinces.

The Chairman: Have you a suggested amendment?

Mr. Hamill: Not for this one, sir.

The Chairman: Do you not think you should?

Mr. Hamill: I do not know how to do it. This is a basic problem. This is a policy decision on the part of the federal Government and to try from the outside to draft legislation is a waste of time.

The Chairman: It presents a lot of problems. There may be a very substantial gap between the death of the donor and the death of the donee. Rates may go up, rates may go down. The province may go out of the taxing field. Ordinarily, as we say, that is the rub of the green and it may hurt someone.

Senator Beaubien (Bedford): If the widow married a much younger man.

Mr. Hamill: There is another problem. On page 8 of the amendments is a suggested variation in clauses 7(1)(a) and 7(1)(b) which deal with the deduction allowable on the death of the spouse in respect of property or gifts made to the surviving spouse. The problem here is that in the act as drafted there is allowed to be deducted from the taxable value of the estate the value of any property that is given outright to the surviving spouse. But, when you come to the so-called tax deferred trust—so called because I so call it—what is allowed to be deducted is not the value of the property, but the value of the gift. It seems to me that the minister in his

speeches has clearly indicated that what is intended to be deducted is the property that goes into the trust, but he has linked in clause 7(1)(b) of the bill as it presently stands the trust under which the surviving spouse is entitled to annual payments, and in that case he obviously does not mean the value of the property. The amendment which is on page 8 of this appendix segregates the property which is to be deducted and the gift which is not to be fully deducted, so it is clear that you are dealing with a deduction of the value of property in a tax deferred trust.

In addition, the tax is on gifts *inter vivos*, and this may have been overlooked. Were I to make a gift to my wife in terms of a tax deferral there is no gift tax paid. It becomes property passing on her death. But, should she predecease me, and I die within three years of making that gift, the bill, as it stands, does not seem to me to exempt my estate from duty, so I would be taxed again notwithstanding my wife's being taxed. This amendment clears up that point. I am sure that that is just an oversight.

Senator Walker: You have drafted an amendment to cover that?

Mr. Hamill: Yes, this amendment is drafted.

The Chairman: It is on page 8 of the appendix. Thank you very much, Mr. Hamill. Does that complete the submissions of The Canadian Bar Association?

Mr. Langford: Yes, Mr. Chairman.

The Chairman: Then, we want to thank you very much for the work you have put into this matter, and for your appearance here today.

Senator Molson: Before this is concluded I would like to put one question to Mr. Gibson. You were talking about the seriousness of this measure in regard to property and civil rights. Are you suggesting that constitutionally this bill may be unsound?

Mr. Gibson: I am afraid that probably it is not unsound.

Mr. Langford: It is our opinion that Parliament can do what it wishes in a taxing statute with respect to what is taxed and what is exempted. We are suggesting that it offends the spirit of the thing when a particular clause can be used in a will to obtain an exemption, and another particular clause can-

not be so used. We are not making a suggestion that it is legally unconstitutional.

Senator Molson: Sometimes the spirit is very weak.

The Chairman: It is usually the other way around; the spirit is strong. We have one more goup, the Canadian Construction Association. I am also conscious of the hour, which is 6.10 in the evening. This committee is going to sit at 9.30 in the morning to deal with the Farm Machinery Bill and I am wondering whether there would be any embarrassment to the Canadian Construction Association if we heard them first thing in the morning.

Senator Walker: I understand they are going to be only 10 minutes.

Mr. Mark Stein, President, Canadian Construction Association: Mr. Hewitt and myself are here from Montreal. We both have very important business at home tomorrow. Our presentation will not take more than 15 minutes.

The Chairman: We shall hear it then.

Mr. Stein: Mr. Chairman and honourable senators, I realize and appreciate the lateness of the hour. I will not tax your patience too long. We are, of course, extremely pleased to have this opportunity of expressing our views to you on certain aspects of the bill in question. With me this evening are Mr. Robert Hewitt, a member of our Legislation and Taxation Committee, and engineer and equipment distributor in Montreal; M. S.D.C. Chutter, General Manager of our association, and Mr. Keith Sandford, a staff member who deals with taxation matters of the Canadian Construction Association and represents the construction industry.

Senator Walker: Excuse me, you are the president, are you not?

Mr. Stein: Yes, I am the president.

The Canadian Construction Association represents the construction industry broadly—general building contractors; road builders and heavy construction firms; trade contractors; manufacturers and suppliers of equipment, materials and services—some 2,700-member firms in all. In addition, we have over 100 member associations with a combined membership of some 12,000 firms. The great majority of contract construction across Canada is executed by these firms.

As you will have seen by our brief, death taxes have caused serious operating problems in the past to our industry, because the industry is composed almost entirely of family firms with very little in the way of liquid assets. Our basic assets are know-how and equipment. The higher rates of tax contained in the new estate tax schedule on certain estates will naturally greatly worsen the problem.

Last fall I was with the Canadian Construction Association president when he visited many of our local affiliated associations. At that time the budget proposals on estate taxes were the top subject of concern at every centre we visited from Newfoundland to British Columbia. At our national convention only this past January, we had some 600 delegates from across Canada and it was a major topic. It was dealt with by three speakers in different parts of the program, and our delegates have adopted a policy statement to this effect, which is quoted in the brief but which I am not going to read to you.

The association has stressed many times in the past the deleterious effect that death duties have on the growth and continuation of family firms and on initiative and enterprise generally. When the budget was introduced last October, the CCA immediately expressed its appreciation of the exemption of spouses from estate taxes but also its grave concern at the increased taxes that would have to be paid in the case of many estates due to the application of higher rates on much smaller estates and the integration of estate and gift taxes. A series of representations have subsequently been made on behalf of the industry.

The main points contained in these submissions have already been dealt with in detail during the Senate debate following the bill's first reading. It was therefore concluded that a lengthy treatment of them in the appended brief was unnecessary. The association would like, however, to stress at this hearing the application of these general principles to the construction industry, rather than to the specific wording and administrative aspects of the bill.

The summary of our recommendations is on page 1 of our brief and, with your indulgence, I will limit myself to this one page. First, there is the fact that the previous schedule of estate taxes should be maintained pending further study. Such action would:

(a) permit the consideration of estate taxes in the light of other proposed tax

reforms to be included in the federal Government's White Paper in a month's time or so;

(b) enable the elements of relief contained in Bill C-165 which enjoy widespread support, such as the exemption for spouses and the option of tax payment in instalments, to be enacted. The option of using either the previous or new exemptions until next August has already been granted;

(c) permit discussions with the provincial governments who currently receive up to 75 per cent of estate tax gross revenues and in several cases are committed to a policy of rebating their shares or have it under serious consideration.

Incidentally, Mr. Chairman, this morning you posed the question as to whether or not there was any logical basis for questioning the finance minister's premise that some estate taxes be increased to offset the revenues lost because of the relief given to spouses and so on in the bill. We would like to suggest two answers. First, the primary recipients of estate taxes are the provinces. Of these, two have already introduced rebates; another is committed to do so, and only last night we heard a report of Quebec's budget which indicates that they have reduced their succession duty.

Second, the higher taxes on sizeable estates will encourage more and more people to seek tax havens, and the federal Government will lose their tax-generating abilities. Also, the deterrents to business expansion, and so on, will tend to cause revenue reductions. Therefore, the higher tax rates and integration of gift taxes may well serve to reduce the federal revenues by more than the \$12 million or so which the minister hopes to raise by this action.

We also recommend, sir, that the previous schedule of taxes be maintained to:

(d) afford some measure of assurance to members of family firms who are adversely affected by the new schedules of estate and gift taxes.

In the way of supplementing our brief, Mr. Chairman, honourable senators, I have brought with me a few letters which exemplify the reactions which we have had across the country from various people in the construction industry, and I propose to read those in.

Senator Phillips (Rigaud): May I put one question to you? I am sorry to interrupt but I

think it is important. In speaking of closely held companies are you speaking of non-listed companies or do you include listed companies?

Mr. Stein: Yes.

Senator Phillips (Rigaud): You suggest that serious consideration should be given to the proposal of the Ontario Economic Council where it says that "the value of such shares be included in determining the rate of transfer tax to be applied to other estate assets, but such value be exempted from transfer tax unless such shares are sold within a period of ten years." Can you pinpoint that proposal so that we can get it into the record. I would like to get the reference on record.

The Chairman: I understand that the answer to your question was that this paragraph 2 and the recommendation was not limited to private family held companies. But then in your brief this is what you talk about—closely held companies. Would not this put a company in that situation if the shares were listed and therefore could be traded as against private companies?

Mr. Stein: Not listed.

The Chairman: You meant not listed. That is a correction, Senator Phillips. He meant not listed.

Senator Phillips (Rigaud): That was an error, thank you.

Mr. Stein: The recommendation referred to was on page 8 of the Ontario Economic Council report.

Senator Phillips (Rigaud): And the date?

Mr. Stein: September 1968. It was entitled "Transfer taxes and their effect on productivity and control of our economy" prepared by John K. Savage and D. Vandenburg of the Ontario Economic Council, dated September 1968.

Now honourable senators, I want to read a few extracts from letters received by us. One is from a general contractor in the Winnipeg area and in one paragraph it says as follows:

I think, in a lot of cases, if the people find that the full implementation of these proposed laws is now in effect, the drive to expand ones' business will come to a halt, for there is no sense in building your firm up with more assets to carry out more work, if, in the end, you have to

sell most of the assets to pay the taxes and your heirs are left high and dry.

Then a couple of paragraphs later we find the following:

In relation to my own situation, if there are no modifications in the new law, then I will consider the situation and probably convert all my assets to cash and say, "That's it". When I lose the right to do with my money as I see fit, after all the taxes I have paid to keep it, and then find it is not mine after all, where is the incentive?

Then there is a letter from a manufacturer of concrete products. It says:

The writer has just turned over control of Universal Concrete Accessories, Limited to a U.K. Company. The prime factor behind this decision was concern about estate duties.

By way of explanation, our Company, incorporated in 1950 from small beginnings has operated effectively, although volume invariably has outstripped any increase in shareholder's equity. We were like many new Companies short of working capital. I owned about 80 per cent of outstanding shares with most of my net worth represented by this and other equities of a non liquid variety. An appraisal of the new succession duties tables clearly indicated that my estate on the demise of my wife and I would indeed be vulnerable. In the circumstances I felt there was really no practical alternative but to dispose of most of my interest in Universal, should a favourable opportunity present itself. I proceeded accordingly.

Senator Walker: Mr. Stein, that situation will be applicable to what percentage of your people, approximately?

Mr. Stein: It is difficult to estimate percentages accurately but I feel that the percentage would be rather appreciable. Members or practitioners of the construction industry have no real liquid assets. We do not carry inventory because we are basically a service industry. The bulk of assets can be in accounts receivable and to a certain extent in equipment too, various varieties of equipment, quite substantial in the case of those in the road building and heavy engineering and construction.

Senator Carter: Would it apply to as much as 10 per cent or 20 per cent? Could you give us some estimate?

Mr. Stein: I would suggest it would apply to more than 50 per cent.

Senator Carter: More than 50 per cent?

Mr. Stein: Yes.

Senator Walker: Because the greater number of you people are in smaller companies? There are a few mammoth ones but, generally speaking, would not 80 per cent of your construction companies be family concerns?

Mr. Stein: You can count on the fingers of two hands the number of mammoth companies in Canada. The others are all small- to medium-sized who carry out the bulk of the work.

In the interests of time, Mr. Chairman, I will not read some of these other extracts from other letters. However, may I leave them with you?

The Chairman: Can I have a motion to append the brief and these letters to the record of today's proceedings?

Hon. Senators: Agreed.

(For text of brief and letters see Appendix "F")

Senator Phillips (Rigaud): As I understand you are through, have you handy the number of people employed by your association?

Mr. Stein: Yes, our industry employs some 600,000 people on site, and to supply those on-site employees with goods, materials and equipment they use and install, an equal number at least in the manufacturing plants.

With your indulgence, I would like to ask Mr. Robert Hewitt to amplify a little on his personal reactions as a result of this tax, before I sum up.

Senator Carter: Did your association make representations to the Commons Committee?

The Chairman: There was not any Commons committee.

Mr. Stein: To the minister?

Senator Walker: The Committee of the Whole; it did not get past that.

The Chairman: Mr. Hewitt may make his statement, but I think he can assume that we are aware of the fact now, from what you have said, that the impact of these higher

rates on your industry will be very great. Do you want to add to that, Mr. Hewitt?

Mr. Robert Hewitt (Canadian Construction Association): If I may have two or three minutes, Mr. Chairman, I appreciate very much the time and the effort expended by this committee for the welfare and betterment of the Canadian people in our wonderful country, Canada. I know you hope to leave a better Canada than existed in years gone by, and I hope to do the same thing.

I think I represent a typical one of these 12,000 companies referred to. My grandfather started in the construction business before 1900.

Senator Isnor: Where are you located?

Mr. Hewitt: I am located in Montreal. This was in Ontario. Then it became Robert Hewitt and Sons, and then under my father James Hewitt and Sons. Now it is Hewitt Equipment, and it is in my lap. I have one son and four daughters. We have 650 employees. We have a payroll of over \$3½ million. Ninety-five per cent of the companies in my segment of the industry—and there are 140 such companies in Canada—are closely family held companies. This is the success of the business, according to the people who know the situation worldwide.

Now, I am an engineer. I have listened to you men today. I hear the wrangling going on. You cannot imagine what a worried man I am. I talked to Mr. Benson personally. He says, "All you have to do is plan against this. We make the rules. You go and plan against them." This surprises me, as an engineer, as a backward way of going about doing something. How can I possibly preserve the lives of these 600 employee families? They are tied up in our company with pensions. Many of them are beyond the stage in life when they can get a job with some other company. This is what concerns me. Financially I can quit tomorrow. My family think I am a fool to keep working at this. I have one sole desire, which is to keep an enterprise going.

You may say to me, "Why don't you go public?" It is not suited to our type of business. Surely to goodness the country we live in does not want to make a set of rules that is only worrying us all to death. When I think of the fees, money and time that we spend on lawyers and accountants trying to overcome these rules you men are trying to put some

sense into. Take my case. What province am I going to be under? Am I going to integrate a federal situation with a provincial situation? You just do not know where you stand.

What has happened? You must know many people who have left the country. This is what they have done, taken their money and gone. You know people like that as I do. This is not what we want to do in Canada, is it? I do not want to have to leave the country, and I am not going to. That is why I am here trying to put some sense into this.

Some hon. Senators: Hear, hear.

Mr. Stein: Mr. Chairman and honourable senators, that is an example of what I was trying to say about worry affecting business decisions. That effect is sure. We in the construction industry want to work, and the time now being spent worrying would be much better spent on production. Our motto, which I paraphrase from a speaker at our recent convention, is that Canada needs work, not worry. Thank you for your time.

Some hon. Senators: Hear, hear.

The Chairman: That concludes the representations from the public. We will sit again next Wednesday to continue our consideration of this bill, when the departmental officers will be here. We may be at the stage when, if the minister is available, we would be ready to hear him. I think we want to hear him.

Senator Walker: I wish he could have been here today.

The Chairman: We want to hear him so much that I do not see how we can conclude our discussions on the bill and come to any decisions until we have heard him.

Hon. Senators: Agreed.

The Chairman: We sit tomorrow at 9.30 a.m. to deal with the farm machinery bill. Then we will have our usual meeting next Wednesday, and one of the items for consideration early in the day will be continuation of our study of Bill C-165. Thank you very much for your patience in waiting here.

The committee adjourned.

APPENDIX "D"

THE TRUST COMPANIES
ASSOCIATION OF CANADA
302 BAY STREET
TORONTO 1, ONTARIO

Executive-Director
E. F. K. Nelson

To: The Chairman and Members of the Committee of the Senate on Banking, Trade and Commerce

Honourable Senators:

Re: Bill C-165—An Act to Amend the Income Tax Act and Estate Tax Act

The Trust Companies Association of Canada appreciates your courtesy in allowing us to appear before your Committee and to make submissions with respect to the Bill C-165, which is before you for consideration.

We share what we believe to be the general approval of the complete exemption from tax for gifts and bequests between husbands and wives. The Minister in his budget speech said that this change recognized the contribution made by wives to the accumulation and conservation of family wealth and would eliminate a deeply felt grievance.

We find the proposed sharply increased rate structure to be objectionable. The progression of the tax becomes very much greater with the maximum rate bearing on taxable estates far smaller than heretofore. We submit that this results in too large a proportion being taken by the State, particularly in the case of estates in the \$80,000 to \$1½ million range. We are also strongly opposed to the integration of gift and estate taxes, the unreasonably high rates of gift tax and the inclusion of the amount of taxable gifts made in the donor's lifetime with the gift taxes paid in the donor's estate for estate tax purposes.

The general effect of the proposed new estate tax rates would be that estates of \$50,000 or less will not be taxed, that the tax burden will be heavier in the approximately \$80,000 to \$1,500,000 range and somewhat less for larger estates. There seems to be little doubt that the existence of many successful family businesses, including farms and ran-

ches, would be seriously endangered by higher taxes, to the detriment of private business in this country.

Quite apart from any social or philosophical aspects, there are important economic consequences which flow from heavy taxation on the death of the donor of property. The desirability of such taxes will depend upon the circumstances of the country in which they may be applied. In the absence of other reasons to the contrary, they may be less inappropriate to a capital exporting country. If economic considerations are to have any weight in the design of our tax structure, recognition must be given to the fact that Canada is a capital hungry country and appears certain to remain so for some time. Canada will need to rely to a considerable degree on the importation of foreign capital which, in equity form, is sometimes said to carry with it its own dangers. It seems obvious that our own future success in accumulating and preserving the capital generated by Canadians themselves for investment is of great importance, in order to reduce our dependence on foreign sources. Indeed foreign sources may not always be as accommodating as we would like.

It is generally conceded that high rates of taxation make saving more difficult. Our rates are at such levels today that the accumulation of wealth by savings is being discouraged. A taxation policy that makes savings more difficult and at the same time scatters existing pools of capital is economically regressive and disrupting to economic development.

Economic growth, which should be accompanied by increased employment, is dependent on investment. Heavy estate and gift taxes reduce the supply of capital available for investment and impose sometimes impossible demands for liquidity upon individuals and privately owned business, thus reducing further the amount of risk capital available at any given time. The following quotation from a recent Report of the Ontario Economic Council is pertinent to this situation.

"The pressure of death taxation toward maintaining in each potential estate an adequate pool of liquid funds subtracts from the national pool of capital at risk. Failure to maintain such funds contributes to the absorption of increasing numbers of private businesses by large corporations with the attendant displacement of private risk capital. Such pressure toward maintenance of liquidity detracts from an expanding economy dependent upon the need for incentives to sustain adequate supplies of risk capital. Substitute reduced-risk marketable securities for the risk capital of private enterprise and the substitution is investment income for earned income. Substitute investment income for earned income and the substitution can be a reduced level of productivity.

The national economic effects of death taxation, at this stage of our nation's development are reflected in a dissipation of estates through: a tendency toward increased consumption by predecessors, (e.g., a measurement of this is the lower retirement ages of businessmen who must thereafter live upon capital or investment income); absorption of private businesses into increasingly large corporate concentrations; and significantly increased economic importance of charitable organizations fostered by their tax-exempt receipt of gifts and bequests.

The national economic effects are potentially measureable in reduced productivity both from labour and from capital. Absorption of the private business by the corporate giant frequently assures the first; substitution of readily-marketable public securities for private capital can produce the second. Death taxation fails, therefore, in one extremely important aspect: it fails to provide incentive toward keeping private capital employed at the highest possible rate of return. A less productive allocation of resources ensues.

Those responsible for guiding the course of our nation's development need only to look to history to find proof that nearly every past civilization has hastened its ruin through its dissipation of capital by taxation."

Transfer taxes on death naturally do not touch foreign corporations, but they are most certainly taken into account by immigrants of means who might otherwise establish domicile here.

The Ontario Economic Council has demonstrated, with considerable success, "that transfer taxes, particularly when imposed on the death of a Canadian investor, influence

the sale of many Canadian owned businesses to foreign investors. The foreign investor possesses a distinct advantage over a Canadian would-be investor since acquisitions by a privately owned Canadian company serve only eventually to compound the death tax payments of the new owners."

The experience of trust companies in handling estates suggests that it is frequently the expectation of heavy death taxation that is a dominant factor leading to sales of privately owned businesses.

Although Canada is a large importer of capital, its total transfer taxation income as a percentage of total tax revenue is higher than that of many western nations who are exporters of capital. "Tax Aspects of Canada's International Competitive Position" by The Private Planning Association of Canada (1963) indicates that, among thirteen Western nations plus Japan, Canada has the highest percentage of tax on capital in the group. Our heavy municipal real property taxes are an important factor here, although Canada has no acknowledged tax on capital gains. Admittedly the data is such that the conclusions should not be overemphasized, but its significance is, nevertheless, very real.

The total impact of taxation on capital, that is to say on investment, in Canada by all governments has now reached a level which is, in our opinion, extremely unhealthy. That this dissipation of capital should be increased by the current taxation proposals causes us great uneasiness.

Such a situation leads inevitably to flights of capital—then to action to restrain such flights and so on, inevitably, to all the sorry list of restrictions on individual economic liberty.

Gift Taxes

Aside from any purpose in connection with the income tax, the principle function of a gift tax is to prevent avoidance of death tax by gifts made during the donor's lifetime. It is, in a sense, an advance payment of death taxes in whole or in part depending upon the relationship between the rates of the two taxes. Put another way, it is a mechanism by which the State exerts a claim on property often long in advance of death occurring. Bill C-165 proposes drastic changes in our gift tax legislation. The rates at the top level are almost three times as high as before. The concept of a cumulative gift sum has been

introduced making taxable gifts more expensive to the donor, as the cumulative gift sum increases with the passage of years. We object most strenuously to the integration of the gift and estate taxes involving the bringing of the cumulative gift sum and gift taxes paid back into the estate, all for estate tax purposes.

Perhaps drawing to your attention some comments of the Presidents of two large Trust Companies and the Chairman of a third to their annual meetings might be a useful method of indicating the views of our industry to these proposals.

Mr. F. E. Case, President of Montreal Trust Company:

"On the surface, levying high estate and gift taxes against the owners of capital gives the impression of helping the wage earner. With due respect, I disagree. High tax rates on capital transfers, in my view, work against labour by reducing the amount of capital available for investment in the development of our resources or in the machinery of production. In fact, the appropriation by the State for its own current operating expenses of a large part of the capital which an individual has been able to save after payment of income and other taxes seems to me to be akin to what the pioneers of this continent regarded as one of the ultimate follies, or disasters—the eating by a settler of his seed corn."

Mr. J. G. Hungerford, Q.C., Chairman of National Trust Company, Limited:

"No-one is going to argue with the proposal to exempt benefits to widows. This, however, is just the sugar-coating. The cruncher comes when gifts are made to the next generation either by will or during lifetime.

The need for private pools of capital for investment by Canadians in their own country requires no emphasis. The need today is greater than ever before. While we are being used to invest in Canada, the Government is doing its best to drain off the means to make it possible."

Mr. C. F. Harrington, President of The Royal Trust Company:

"What seems to emerge from the debate, however, is a re-statement of a government or political philosophy. We in Canada have surely heretofore recognized the need for

capital formation wherever it can be done; this is a new country and we still need more capital than we seem to be able to raise. This is partly because we want to give ourselves the best of everything for everyone—not in itself an unworthy ambition, but also an almost sure prescription for national bankruptcy. But we are now being told, in effect, that the accumulation of capital in private hands, and its transmission to succeeding generations, whether in the form of land, family businesses, or stocks and bonds, is not necessarily an estimable goal to strive for. I find this unacceptable, as do any truly responsible Canadians to whom I have spoken, including a number of thoughtful politicians in more than one political party. If the desire and ability to produce, save, create, and pass on to one's descendants is legislated out of existence, then I need not tell you what kind of a country we can expect to have."

The effect of the proposed new gift and estate taxes seems to be that while the State will not intervene in gifts, testamentary or otherwise, between spouses, it is going to interfere drastically with a person's ability to pass property on to his family, creating particular difficulties where the principal asset is a family business.

All of this has unpleasant implications for the future to those who value those basic concepts upon which this country was built. We think that personal saving must be encouraged. We believe that there is a deeply rooted human instinct to want to pass on to a succeeding generation, at least a fair proportion of what one has accumulated, often with much sacrifice and labour. We do not want the State, however reluctantly, to replace the individual as the source of savings and investment, a development which could quickly result from taxation policies which appear to be reflected in the present legislation.

We have considered carefully what we might recommend, for your consideration, in the light of the objections which we have raised. Under different circumstances we would have suggested that, on economic grounds, death taxation should be eliminated while Canada remains a substantial importer of capital. We appreciate, however, that the financial position of the Federal Government is such that even the revenue which it retains from the estate tax, after providing for the Provinces, is of considerable importance. It is

our recommendation that there must be some scaling down of the proposed rate structure where it affects estates in the range of approximately \$80,000 to \$1,500,000. Bearing in mind that the exemption between husbands and wives results in postponement of the receipt of taxes rather than an actual loss of revenue, we submit that rate reductions can be of considerable significance in reducing the impact of tax on the classes of estates under discussion.

As to gift taxes, we urge that the top rate not exceed 50 per cent, the highest proposed rate of estate tax, and that the balance of the rate structure be reduced accordingly. We recommend that there be no integration of the two taxes so that the amount of the gift and the gift tax not be brought back into the estate for estate tax purposes and a return to the principle that only gifts made three years before death be brought back into the estate for the purposes of taxation.

As a final general comment we would observe that the wording of Bill C-165 is difficult and would make the legislation which it amends more complicated. We would further suggest that taxation which is imposed for purposes other than the raising of revenue is apt to become particularly difficult and complicated. We feel that these tax proposals contain social implications which far outweigh their revenue aspects. Unfortunately, the more complicated tax legislation becomes, the greater is its administrative cost to the government and the greater the cost of taxpayer compliance, leading to less net revenue for government and a greater financial burden for the taxpayer.

Turning to those other matters referred to earlier in this submission we offer these comments and suggestions.

Following the introduction of the budget resolutions it became apparent that they contained retroactive implications inasmuch as subsequent to the introduction of the resolutions but prior to the passing of the enabling legislation some persons would die without being able to determine precisely the state of the law which would apply to their estates. In addition, even after the legislation becomes definitive there will be the tremendous physical task of amending the Wills of many people in order that they may be drawn in a manner to attract the minimum impact of Federal estate tax.

In recognition of this situation there was included in Bill C-165 an alleviating provision which is contained in Section 13(2) of the Bill. In effect, it provides that in the case of persons who die after October 22, 1968, but before August 1, 1969, the exemptions which will apply to their estates will be the greater of the exemptions allowed under the Act as they applied at October 21, 1968, or the sum of \$20,000 plus the exemptions that are proposed by the Bill.

We submit that equity would be better served if Section 13(2) were to be changed to provide that an executor might elect, in the case of any death occurring between October 22, 1968, and August 1, 1969, that the estate be taxed under the Act as it stood on October 21, 1968, or as amended by the enactment of Bill C-165.

The other provision to which we would draw your attention is one of considerable concern to us as professional trustees. It is the enactment of the new Section 3(1a) under subsection 2 of Section 2 of the amending Bill which provides that upon the death of a person who has been the beneficiary of a trust created by his or her spouse which is exempt from gift tax and estate tax, the property comprising such trust is deemed to be property passing on the death of the donee and is included in his or her estate to determine the rates of duty which will apply. Other provisions in the Act provide that the duty, as so determined, will be apportioned between the trust property and the other separate assets of the donee.

Under the general scheme of this legislation, if the estate tax or gift tax has been suspended during the lifetime of the spouse who was the donee under the trust, it is understandable that the property comprising the trust should attract taxation upon the death of the donee. However, it is our submission that the treatment of this property as if it were a property of the donee results in inequitable taxation of individuals and presents administration problems to trustees which are in direct conflict with their duties as have been evolved under the law pertaining to the administration of trusts.

We suggest that this concept of the notional shifting of the property from one estate to another is an oversimplification and has been done without a full consideration of the actual situations which obtain in a number of estates. We might first point out that where a man

leaves his property outright to his wife after this legislation has been enacted he will do so with full knowledge of the implications which will arise upon her death in so far as Federal estate taxes are concerned.

We submit that this combining of estates creates inequities in the taxing of individuals. While the taxing measure which you are considering is the taxing of an estate, the ultimate burden is, of course, borne by the beneficiaries and we think it is only proper to consider the ultimate effect of the tax on the beneficiaries.

It is not uncommon, where there are no children of a marriage and where both parties have separate assets derived independently of each other, for the spouses, after providing mutual protection for each other under their Wills, ultimately to dispose of their separate assets to their respective blood relatives. Consider the case where the wife has a maiden sister and the husband has nephews and nieces being children of his brothers and sisters. It is more usual for the husband to leave the larger estate and for him to predecease his wife. If he provides a tax exempt trust for the benefit of his wife during her lifetime the assets of this trust are, upon her death, grossed with her separate assets in determining the rates of duty which are applicable to their combined assets. May we illustrate what we consider to be the inequities arising under this provision by the following example.

It is not unusual for a widow to remarry and, particularly if the remarriage takes place reasonably late in life, she is likely to survive her second husband and she may, for the balance of her lifetime, be the beneficiary under exempt trusts established by both her deceased husbands. If both husbands had had children by their first marriages and the children are the ultimate beneficiaries under their respective fathers' estates, they will ultimately pay taxes based on the combined amount of the two estates, even though there is no rational basis for treating them as one taxable unit upon the death of the widow. A cursory review of estates in which our companies have been involved would indicate that this situation occurs frequently and often there is considerable disparity between the size of the two estates. One can have the situation where the beneficiaries of an estate of perhaps \$100,000 or \$200,000 will pay taxes at rates which are designed to apply to estates of a million dollars or more.

We mentioned previously that this same provision leads us to believe that we will face administrative problems which are in conflict with our duties as a trustee. The duties of a trustee must be executed meticulously and the trustee must account to the Court for disbursements made from the trust funds under his control. Perhaps the simplest application of this principle is that a trustee does not issue a cheque in payment of any account unless he is satisfied as to its correctness and this applies to the payment of estate taxes as well as any other accounts incurred.

As the Act under consideration is now drafted, if the executor of the surviving spouse is a different person from the executor of the spouse who died first and a tax exempt trust is involved in the first estate, an assessment for tax will be prepared by the Department and levied against both executors made on the basis of information filed and decisions made by the two different executors independently of each other.

Let us refer to two such trusts as Trust A and Trust B. If the beneficiaries of both trusts happen to be the same, the problems can be reduced by obtaining the consents of such beneficiaries but again, there are sufficient instances of cases where the beneficiaries are not the same to pose a problem of considerable magnitude. In order to determine the tax, the assets comprising Trust A and Trust B must be valued. If the assets are principally marketable securities there is very little danger of a mistake being made in either trust. However, in many instances there are holdings of real estate, shares in private companies and other assets, the value of which might be a matter of opinion and very frequently involve prolonged negotiations between the trustee and the taxing authorities before a mutually agreeable valuation is determined. In some cases the matter will have to be referred to the Court for adjudication.

The trustee of Trust A has no right to demand disclosure of information concerning the assets which are held in Trust B and as a matter of fact, it would be a breach of trust if this confidential information were disclosed to a stranger without the consent of the beneficiaries. This becomes particularly pertinent where the asset of the trust is a family company. We therefore can envisage that in certain instances we, as trustees, will receive an assessment levying duties upon a trust under

our administration where it is factually impossible for us to determine the correctness of such assessment.

Upon the death of a life tenant the remaindersmen of a trust are entitled to have the assets of the trust delivered to them within a reasonable time. Obviously if a tax clearance must be received before distribution a reasonable time would encompass the length of time which it would take a trustee with ordinary diligence to obtain that clearance. We are now confronted with a situation where this period of time is not determined by our diligence but it is determined by the diligence or lack of diligence of the person handling the affairs of the spouse who survived. In certain instances it is conceivable that there is no one sufficiently interested in the affairs of the surviving spouse to take the necessary steps to provide the estate tax authorities with even the information that he or she left no assets of any value. We are concerned that this can lead to situations where the administration of Trust A will drag on indefinitely. It is unlikely under the circumstances that any Court would hold the trustee responsible but as a practical matter the beneficiaries will undoubtedly associate the delay with his administration of the trust and their relations will deteriorate.

Particularly, as we feel there is no logical justification for the proposed method, we submit that it is a more reasonable approach to consider that the taxing burden always remains with the exempt trust but this burden is merely suspended while the surviving spouse is enjoying the benefits of the trust. Upon he or she ceasing to enjoy those benefits the trust would then become taxable as a separate entity. In determining such taxation any benefits which the testator had given outright at the time of his death would be brought into account for determining the rates applicable to the trust.

If trusts are taxed in this manner, we believe that it would permit a wider application of the principle that benefits between spouses should be tax exempt. We specifically refer to the fact that under the proposed legislation trusts which contain a clause which provides that benefits are diminished or cease upon remarriage are not tax exempt. In a statement issued by the Minister of Finance on December 31, 1968, he indicated that it was not practical to exempt such trusts because this would involve taxing the widow upon remarriage as though she had made a

gift of the assets in the trust. With due respect, we submit that it is not the widow who would be taxed but that it would be the trust as such and the burden would be transferred to the ultimate beneficiaries of the trust. It would be a relatively simple matter that such a trust become taxable on the death or remarriage of the surviving spouse, whichever first occurred, and at the same time would extend the same equitable principles of taxation to such trusts.

We understand that there is no intention to levy tax on a trust during the lifetime of a surviving spouse where he or she is the only person who is entitled to receive any portion of the capital or income of the trust during his or her lifetime. We have some concern as to whether this intention is fully implemented under the present wording of Section 3(1)(b) of Bill C-165 and would refer you to its opening paragraph. We are concerned that the present language might lead to an interpretation that the interests of all the beneficiaries under the trust must be absolute and indefeasible at the time of its establishment. We would suggest that this should be clarified by adding such words as "in which the interest of the surviving spouse" to "by his will" on line 16 so that the amended subsection would read...

(b) The value of any gift made by the deceased whether during his lifetime or by his will *in which the interest of the surviving spouse can within six months, etc.*

Canada is signatory to a number of bilateral tax conventions, intended to eliminate or reduce the double imposition of death taxes. A usual feature of these conventions is a limitation of the period, following the date of death, during which a claim for foreign tax credit or refund may be made. In most cases the period is six years from the date of death, although the Canada-France convention provides for only five years.

Bill C-165, in one kind of situation, would seem to nullify the purpose of these conventions. This is where a trust is involved, in which the spouse of the deceased has an absolute and indefeasible interest and which, therefore, would not be taxable under the Bill. If the trust includes foreign property, the other country, signatory to the convention, can impose tax at the time of death but would not do so again on the death of the surviving spouse, the life tenant.

Canada, on the other hand, would not impose tax on the first death, but would do so on the death of the surviving spouse. Should the surviving spouse die before the limitation expires, presumably the foreign tax credit could apply but, if the surviving spouse outlives the period of the limitation, the foreign tax credit would be lost.

In this shrinking world, many estates or more properly in this case, trusts, will be invested in greater or lesser degree in foreign, probably American, securities. The problem therefore is of some significance and the potential impact on the estates concerned could be serious.

The apparent solution is to obtain a modification of the tax conventions, in which Canada is involved, seeking an extension of the limitation, for Canadians at least, to the lifetime of the surviving spouse. We draw this to your attention in the hope that practical steps can be taken to overcome the difficulty.

Companies have expressed concern to us about the status, under Bill C-165, of voluntary payments by an employer to the widow of an employee.

Section 7 of the Estate Tax Act is amended by Section 3(1)(a) of the Bill, to provide that

where, within six months or such longer period as may be reasonable in the circumstances, the value of any property passing on the death of the deceased to which his spouse is the successor be established to be vested indefeasibly in his spouse, it would qualify for the exemption from tax of property transferred between husband and wife.

The phrase "or such longer period as may be reasonable in the circumstances" does not make it clear that the payments under discussion, which would come under Section 31(1)(i) of the Act, are of a type which would be exempt from estate tax.

Voluntary payments made by an employer to a widow of a deceased employee may not have been contemplated until long after the employee's death. We suggest that it is well within the spirit of Bill C-165 that the exemption should be clearly written into the law and not be subject in each case to administrative decision.

All of which is respectfully submitted.

E. F. K. Nelson

Executive Director

The Trust Companies Association
of Canada.

March 13, 1969

APPENDIX "E"

A Submission to the
BANKING, TRADE AND COMMERCE
COMMITTEE
of the
SENATE OF CANADA
by the
ONTARIO BRANCH, CANADIAN
BAR ASSOCIATION

represented by

J. ALEXANDER LANGFORD, of Messrs. MILLER, THOMSON, HICKS, SEDGEWICK, LEWIS & HEALY,
F. DOUGLAS GIBSON, of Messrs. FASKEN & CALVIN,
FREDERICK D. BAKER, of Crown Trust Company,
FRANCIS J. HAMILL, of Messrs. BLAKE, CASSELS & GRAYDEN.

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1. ALTERNATIVE TAXATION FORMULAE	
The new Estate Tax Rules render perhaps one-half of all Wills totally or partly defective.	
This, in turn, dictates a massive programme of will drawing. First, the lawyers must educate Then, each property owning citizen must have constructed for him a will which will be much more complex and individual than those of the past.	
This process cannot even theoretically be completed in two years. In these circumstances we suggest that the citizen would be best and most fairly served by giving the executors of those who die within one year of proclamation an option to be taxed either on the old or the new schemes.	
2. COMBINING ESTATES FOR TAXATION	
(a) <i>Separate Assessments to Separate Executors</i>	
Consider the unfortunate case where the executors of a deceased widow are entirely different persons from the executors of the husband who predeceased her, and in whose estate she had a life interest. In such a case it	

would be quite probable that different solicitors would be involved.

The policy of the Bill is that for tax purposes the property which produced a life income for the widow is to be lumped together with the widow's separate property. Under the Bill as it now stands one assessment would be issued, presumably to the executors of the widow, and those executors and their solicitors would have the problem of working out the proper apportionment of the total bill to be paid by themselves and to be paid by the executors of the husband. This could be a complicated and expensive problem to what will frequently be a small estate that ought not to be so burdened. The suggested amendment requires the Minister to allocate tax and assess separately the different sets of executors involved.

See Page 1 of Appendix for draft amendment.

(b) Combining Unrelated Estates Where a Widow Remarries

It is the policy of the Bill to add together the separate estate of a widow with the capital of which she may have been paid the life income under the will of her late husband. No complaint is made about this policy.

Suppose the not uncommon case of a man dying relatively young, who leaves his estate to his wife for life, with the capital going to his small children on her death. Suppose in years later his widow remarries a man who is himself a widower with children of his own. Suppose that the widow suffers the loss of her second husband, whose will also provides her with a life income, the capital going to the second husband's own children.

Suppose finally that our widow dies leaving her own modest estate to her own children. Under the Bill all three estates are lumped together for purposes of establishing the tax payable. It seems to the Bar Association to be unjust that the first husband's estate should be increased by the value of the estate of the second husband. For example, the first husband's \$100,000 estate passing to his children on his widow's death might be taxed at a 50% rate because the widow had years later remarried a man with a \$1,000,000 estate, which estate is being distributed to entirely different persons on the widow's death. It is, of course, entirely fair and acceptable that each estate would be enhanced by the value of the widow's separate property. The

unfairness lies in joining together the two unrelated estates of deceased husbands.

To resolve such a defect in the Bill is a complex undertaking, but the draft amendment shown on *page 2 of the appendix* in our view does complete the task and the problem is sufficiently common that it ought to be removed.

3. THE REMARRIAGE CLAUSES

The Bill contains a basic policy that a gift of income to a widow is exempt provided that such gift is absolute and unconditional. A provision that the widow's interest is reduced or terminated on her remarriage would lose the entire exemption. A slightly different problem would arise in a living trust where the creator of a trust contemplates the possibility of divorce as well as remarriage. He or she might wish to terminate or reduce the benefit on the happening of such an event. In the case of a living trust the gift tax exemption is lost as well as the estate tax exemption.

To deny persons the opportunity of including such a provision in a will or trust is to deny the use of a very common and sometimes even necessary provision. A social argument rages as to the justice of such a provision but we ask you to note that there are cases in which it would be unjust not to include such a provision. Indeed the Bill itself recognizes and allows for it in the case of pension trusts. The exception is no less important in wills and living trusts.

The denial of such a general and presently existing right has no place in a taxing statute.

Consider for example the case of a young couple with small children. Possibly the wife has substantial inheritance out of which she would be happy to provide a life income for her husband, but the benefit appropriate for him might well change and be more in favour of her children in the event of his remarriage. Consider also the competing claims of a surviving spouse and a disabled adult child. Remarriage of the surviving spouse could well be the factor that should swing the balance.

The draft amendments to the Estate Tax Act shown on *page 5 of the appendix*, and Part IV of the Income Tax Act shown on *pages 7 and 6 of the appendix* would allow the present right to stand unimpaired within the scheme of the proposed amendments.

Incidentally, the cure for this difficulty would be much easier without the "combination principle".

4. LOSS OF CHARITABLE DEDUCTION ON REMAINDER GIFTS

Take the very common will plan of a childless couple in which the man leaves his wife a life interest with remainder over on her death to a charity.

At first glance, one would expect a "Spouse's Deduction" on the husband's death and a "Charitable Deduction" on the wife's death. In fact, however, because of the mechanics of the "combining" of the value of the trust with the wife's estate, charitable deduction is lost.

We do not know if this is an intended result. If it is not, the exemption can be restored by deleting "by the deceased" from Section 7(1) (d).

5. PROTECTION OF DEPENDENT CHILDREN

Suppose the not uncommon case of a man consulting you about his will. The client wishes to provide for his wife by way of a life income, and after the death of the wife to divide the capital among the children. This is an entirely normal situation. Suppose, however, that for good and sufficient reasons the client cannot rely upon his wife to make proper provisions for the maintenance and education of the children during their dependency after his death. The client, therefore, wishes to provide appropriate life income to the wife and to the children during their dependency. His executors and/or trustees will have the right to use some of the income or capital to meet the basic needs of the dependent children. Such a situation is common in every law office. There are many reasons why a testator might not so rely upon his spouse. One has only to think of mental illness, alcoholism and the spendthrift to begin to appreciate some of the common situations.

Unfortunately as the Bill now stands insertion of clauses to protect dependent children in this way during the period when their surviving parent is entitled to a life income would make the entire fund taxable. The problem will be particularly acute in the modest estates not sufficiently large to establish separate trusts for children. The draft

amendment shown on pages 7A to 7B of the *appendix* would completely meet the problem without destroying the basic policy of the Bill. The underlined words represent the changes.

6. DEDUCTIONS FOR INFIRM CHILDREN

The Bill permits very generous deductions for dependent infirm children. However, to claim the deduction the benefit must be paid to the infirm child before his 40th birthday.

In most cases of infirmity this is out of the question and parents will set up *lifetime* trusts even though the deduction be lost.

We suggest that the 40 year rule for trusts be relaxed in these circumstances.

7. LOSS OF FOREIGN TAX CREDITS

It is an accepted principle that there shall be a reduction in Canadian tax where tax was properly paid to a foreign Government (i.e. where the asset was situated within that foreign country). The "Deferment Principle" makes this allowance awkward because the Foreign Tax would normally be paid when the first spouse died, and the Canada Estate Tax when the second spouse died.

It seems to us that there should be an allowance on the death of the surviving spouse of the *foreign tax which was actually paid* on the death of the predeceasing spouse. While this would mean that the deduction was unrelated to the amount of Canadian tax which would have been payable on the death of the predeceasing spouse, the alternative works an injustice.

8. LOSS OF PROVINCIAL TAX CREDIT

The complex provisions of Section 9(9) which determine the amount of Provincial tax credit available in respect of a tax-deferred trust are evidently designed to protect the Federal Government in the situation where a Province, which on the death of the predeceasing spouse imposed a succession duty, has abandoned the succession duty field by the time of the death of the surviving spouse.

The device of prescribing appointed Provinces, it seems to us, will inevitably result in an injustice.

We suggest that the clause be amended to relate the determination of the property to which the Provincial tax credit is applicable to the death of the predeceasing spouse, and provide that in the ratio that that property

bears to the whole of the property passing on the death of the predeceasing spouse be available for credit on the death of the surviving spouse.

Basically, all that is involved is the deletion of the references to appointed Provinces, and the substitution of "prescribed" and "designated" where the word appointed appears in Section 9(9).

9. LANGUAGE CLARIFICATION IN SECTION 7

Section 7(1) (a) and (b) as drafted leave ambiguities in the interpretation.

(a) Fundamentally the intention of the Minister is to exempt from tax property transfers between spouses. In our opinion the wording of Section 7(1) (a) and (b) do not necessarily give effect to this decision, and in addition creates ancillary problems in the quantitative of the deductions from taxable values.

It will be noted that in Section 7(1)(a) what is to be deducted is the value of the *property* which passes outright to the surviving spouse.

The Minister's intention, as appears from speeches and press releases, is also to permit the deduction of the value of property which is to be held in trust under Section 7(1)(b)(A). Unfortunately, the deduction is expressed to be in respect of the value of the *gift* conferred, and it is evident from the terms of Section 7(1)(b)(B) that that value is not necessarily the value of the property which is to be held in trust.

The draft amendment shown in the appendix, it seems to us, is more clearly expressive of the Minister's intentions as stated, and in addition ensures that gifts inter vivos to a spouse which are exempt from gift tax under Section 112(1)(d) and (e) of the Income Tax Act are not subjected to tax if the donor spouse dies within three years of the gift.

(b) In addition, we feel that the provision as it stands is unduly restrictive. The essential factors should be that the interests of the surviving spouse are absolute and indefeasible. Since tax is to be deferred until the death of the surviving spouse, there would seem to be no valid objection to deferring the vesting of the subsequent interests until that time. This would accord with the age old practice of the legal profession to defer vesting until the time for dealing with the contingent or postponed interests has arrived.

See Pages 8 to 13 of the appendix for draft amendments.

10. IMPROVING THE RELATIONSHIP BETWEEN GIFT TAX RATES AND ESTATE TAX RATES

As suggested in our general remarks earlier, we approved the idea of integrating gift tax and estate tax. It does seem, however, that while the framework is provided, the gift tax rates have been made so high that the integration is effected by preventing lifetime gifts with punitive rates rather than a true integration. At first glance, the gift tax rates are about 10% less than estate tax rates, but this omits the factor that in virtually every case the gift tax will be paid many years before the comparable estate tax. If, as has been said, "money doubles itself every ten years compounded" the true burden of gift tax paid say ten years before a man's death would be almost double the burden of his death tax if he retained the asset.

We have two suggestions. The first is to provide a system of interest of annual interest credits on the gift tax paid. Thus, if a man had paid gift tax 20 years before his death, he would get credit not only for the gift tax paid, but for interest on that money paid over the intervening years, possibly resulting in a refund of tax at the time of his death. The other suggestion is that in rationalizing the two rates, there should be a modest tax advantage to gifts, not enough to have it used as a tax device, but enough to encourage or at least not discourage older people from passing assets on to the younger and presumably more active generation.

11. TAXATION WHERE THE TERMS OF A WILL ARE ALTERED AFTER DEATH BY SOME LEGAL ACT

It will be inevitable that during the next 30 years many people will die with old style wills, (i.e. wills drawn to conform with the old patterns of taxation).

Many beneficiaries will suffer, but some of these obsolete will plans will be curable by children disclaiming their encroachment powers or by applications in Court.

Where such changes are effected immediately after the death, the altered will arrangements are recognized as the basis for taxa-

tion in the old Act and in the new Bill up to August 1, 1969.

We recommend that such changes in wills if done immediately after a death are normal and desirable and fair to "national revenue",

and that specific approval of the practice be made permanent and not limited to August, 1969.

Similarly, Dependants' Relief Applications in Court should be treated in the same way.

APPENDIX

to the
SUBMISSIONS BY THE ONTARIO
BRANCH,
CANADIAN BAR ASSOCIATION
to the
BANKING, TRADE AND COMMERCE
COMMITTEE
of the
SENATE OF CANADA
ESTATE TAX

— 1 —

15. A. Where the executor of the deceased and a person who is a successor by virtue only of subsection (viii) of paragraph (r) of subsection (1) of Section 58 so require, it shall be the duty of the Minister to issue notices of assessment showing the apportionment of tax payable under this Part on the persons liable to the payment thereof.

— 2 —

COMPUTATION OF TAX

8. (1) *Subject to subsection (2) the tax payable under this Part upon the aggregate taxable value of the property passing upon the death of the person is the amount, if any, by which*

- (a) the amount determined under subsection (4) in respect of his state sum exceeds
- (b) the amount determined under subsection (4) in respect of his gift sum.

(2) *Where property passes on the death of the deceased by virtue of subsection (1a) of Section 3 in respect of gifts made by more than one spouse the tax payable under this Part is the aggregate of the amount obtained*

(a) *by applying to the property passing on the death of the deceased (other than property passing by virtue of subsection (1a) of Section 3) a rate of tax computed as a percentage of the aggregate net value of the property passing on his death of*

(i) *the amount determined under subsection (4) in respect of his estate sum exceeds*

(ii) *the amount determined under subsection (4) respect of his gift sum and*

(b) *by applying to the property passing on the death of a deceased by virtue of sub-*

section (1a) of Section 3 in respect of each gift made by a particular spouse at rate of tax computed as a percentage of the aggregate net value of the property passing on his death of

— 3 —

(i) *the amount determined under subsection (4) in respect of the special estate sum applicable to that particular spouse exceeds*

(ii) *the amount determined under subsection (4) in respect of his gift sum.*

DEFINITIONS

(2) For the purposes of this section.

(a) a deceased's "estate sum" is the aggregate of

(i) the aggregate taxable value of the property passing on his death *other than property passing on his death by virtue of subsection (1a) of Section 3.*

(ii) the aggregate taxable value of property passing on his death by virtue of subsection (1a) of Section 3.

(iii) the amount, if any, by which his cumulative gift sum for the year in which he died exceeds the lesser of

(A) the amount included therein in respect of property the value of which has been included in computing the aggregate net value of the property passing on his death.

or

(B) the amount included in the computation of the aggregate net value of the property passing on his death, in respect of property the value of which has been included in his cumulative gift sum for the year in which he died, and

— 4 —

(iv) the amount determined at the time of his death under subsection (3) of section 115 of the Income Tax Act in respect of the cumulative gift sum equal in amount to the excess referred to in subparagraph (iii); and

(b) a deceased's "special estate sum" is the aggregate of

(i) the aggregate taxable value of the property passing on his death other than property passing by virtue of subsection (1a) of Section 3.

(ii) the total value of gifts made by a particular spouse included as property passing on his death by virtue of subsection (1a) of Section 3.

(iii) the excess determined under subparagraph (iii) of paragraph (a) and the amount determined under subparagraph (iv) of paragraph (a) in computing his estate sum

(c) a deceased's "gift sum" is \$20,000 plus the aggregate of the excess determined under subparagraph (iii) of paragraph (a) and the amount determined under subparagraph (iv) of that paragraph in computing his estate sum.

Renumber subsections (3) and (4) to (4) and (5)

— 5 —

ESTATE TAX

Add

3. (1) (r) property comprised in a settlement for which a deduction was allowed by virtue of paragraph (b) of subsection (1) of section 7, or a gift that as exempt from tax under Part IV of the Income Tax Act by virtue of paragraph (e) of subsection (1) of section 112 thereof to the extent of the value of such property at the date of remarriage as was on the remarriage of the spouse no longer held on such terms that the said deduction of exemption would be granted.

Add

7. (1b) for the purposes of paragraph (b) of subsection (1) where any gift was made by the deceased by the creation of a settlement described in that paragraph subject to a provision that the benefit conferred on his spouse or a part thereof ceases to be payable to him if he remarries such gift shall not by reason only of such provision be considered not to be vested indefeasibly in him.

(Renumber 7 (1c) and 7 (1d))

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— 6 —

GIFT TAX

112 (1)(e) a gift made by a donor during his lifetime made by the creation of or the transfer of property to a trust under which

(i) his spouse is absolutely and indefeasibly entitled to receive all of the income of the trust that arises before such spouse's death and

(ii) no person, except such spouse, is entitled (eligible) before such spouse's death to receive or otherwise obtain the use of any of the income or capital of the trust,

provided that for the purposes of this paragraph where any gift was made by the donor subject to a provision that the benefit conferred on his spouse or a part thereof ceases to be payable to him in the event of divorce from the donor or remarriage such gift shall not by reason only of such provision be considered not to be indefeasibly vested in him.

— 7 —

GIFT TAX

DEEMED GIFT WHERE PROPERTY DISTRIBUTED

113 (2) (a) Where a gift

(i) that was, by virtue of paragraph (e) of subsection (1) of section 112, exempt from tax under this Part, or

(ii) the value of which was, by virtue of paragraph (b) of subsection (1) of section 7 of the Estate Tax Act, deductible in computing the aggregate taxable value of the property passing on the death of the donor,

was made by the donor to his spouse by the creation of a trust and, before the death of such spouse, income or capital of the trust was paid out to some person other than the spouse, such spouse shall be deemed to have made a gift to that person of the income or capital so paid out.

(b) Where a gift that was by virtue of paragraph (e) of subsection (1) of section 112 exempt from tax under this Part was made by the donor to his spouse by the creation of a trust and before the death of the donor income or capital of the trust was on or after the divorce of the donor and such spouse paid out to or directed to be held for the benefit of some person other than the spouse or the donor the donor shall be deemed to have made a gift to that person of the income or capital so paid out or directed to be held.

— 7 A —

ESTATE TAX

7. (1) (b) The value of any gift made by the deceased whether during his lifetime or by his will that can within a reasonable time after the time of the death of the deceased be established to be absolute and indefeasible and that was made by him by the creation of a settlement under which

(i) the spouse of the deceased is entitled to receive *for the use and benefit of such spouse or for the use and benefit of a child of the deceased while such child is not sui juris*

(A) all of the income of the settlement that arises after the death of the deceased and before the death of such spouse, or

(B) periodic payments in ascertained amounts or limited to ascertained maximum amounts, to be made at intervals not greater than twelve months, out of the income of the settlement that arises after the death of the deceased and before the death of such spouse, or, if that income is completely exhausted by those payments, out of the income and capital of the settlement,

provided that for the purposes of this paragraph the spouse of the deceased shall be deemed to be entitled to receive any income or capital paid or applied by the trustee of such settlement to meet the reasonable needs of a child of the deceased while such child was not sui juris, and

— 7 B —

(ii) no person such spouse is entitled to receive or otherwise obtain, after the death of the deceased and before the death of such spouse, any of the capital of the settlement or any use thereof, or any of the income of the settlement or any use thereof, or any of the income of the settlement to which such spouse is entitled to any use thereof, *provided that for the purposes of this paragraph the spouse of the deceased shall be deemed to be entitled to receive any income or capital paid or applied by the trustee of such settlement to meet the reasonable needs of a child of the deceased while such child was not sui juris, and*

(iii) if the settlement is not a trust, all interest in and rights to the property subject to the settlement and all interest in and rights of the income of the settlement fall into the possession of the persons entitled thereto not later than the

day after the day of the death of such spouse;

— 8 —

7. (1) (a) the value of any property

(i) passing on the death of the deceased that within six months after the death of the deceased or such longer period as may be reasonable in the circumstances

(A) can be established not to be property comprised in a settlement and that has vested absolutely in his spouse for the benefit of such spouse

(B) can be established to be property comprised in a gift to his spouse for the benefit of such spouse that was exempt from tax under Part IV of the Income Tax Act by virtue of paragraphs (d) or (e) of subsection (1) of Section 112 thereof

(C) can be established to be property comprised in a settlement under the will of the deceased under which

(I) the spouse of the deceased is absolutely and indefeasibly entitled to receive all of the income of the settlement that arises after the death of the deceased and before the death of such spouse and

(II) no person except such spouse may receive or otherwise obtain after the death of the deceased and before the

— 9 —

death of such spouse any of the capital of the settlement or any use thereof of any of the income of the settlement to which such spouse is entitled or any use thereof.

(D) That can be established to be property transferred to a trust that at the time of the transfer was a settlement to which sub-clauses (I) and (II) of clause C. apply the creation of which constituted a gift inter vivos by him to his spouse which was exempt from tax under Part IV of the Income Tax Act by virtue of paragraph e of subsection (1) of Section 112 thereof.

(b) the value of any gift made by the deceased whether during his lifetime or by his will that can within six months after the death of the deceased or such longer period as may be reasonable in the circumstances be established to have been made by him by the creation of a settlement under which

(i) the spouse of the deceased is absolutely and indefeasibly entitled to receive periodic payment in ascertained amounts or limited to ascertained maximum

amounts to be made at intervals not greater than twelve months out of the income of the settlement that arises after the death of the deceased and before the

— 10 —

death of such spouse, or, if that income is completely exhausted by those payments out of the income and capital of the settlement and

(ii) no person except such spouse may receive or otherwise obtain after the death of the deceased and before the death of such spouse any of the capital of such settlement or any use thereof or any of the income of the settlement to which such spouse is entitled or any use thereof.

— 11 —

Section 3

(1a) Where a donee during his lifetime received from his spouse a gift in respect of which a deduction was allowed by virtue of Clause c of sub-paragraph (1) of paragraph (a) or paragraph (b) of sub-section (1) of Section 7 or a gift that was exempt from tax under Part IV of the Income Tax Act by virtue of paragraph e of sub-section (1) of Section 112 thereof made by his spouse by the creation of a trust or other settlement described therein the property subject to the trust or other settlement at the time of the death of the donee (including any amount

payable to the trustee of such trust under any policy of insurance effected on the life of the donee) shall be deemed to be property passing on the death of the donee.

— 12 —

Section 3

(1b) For the purpose of sub-section (1a) where any gift referred to therein was made by the donor thereof by the creation of a Trust is a settlement described in paragraph (b) of sub-section (1) of Section 7 the value of the property subject to the Trust at the time of the death of the donee shall be deemed to be the lessor of its value at that time or the value at the time of the death of the donor determined in accordance with the regulations of the payments referred to in that paragraph.

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Section 7

(1b) For the purpose of paragraph (b) of sub-section (1) where any gift of the deceased by the creation of a Trust that is a settlement described in that paragraph the value of the property subject to the Trust shall be deemed to be the lessor of its value at the time of the death of the donor or the value at that time determined in accordance with the regulations of the payments referred to in sub-paragraph (1) of that paragraph.

APPENDIX "F"

CANADIAN
CONSTRUCTION ASSOCIATION

Construction House, 151 O'Connor St.,
Ottawa 4, Canada
Area Code 613/236-9455

April 30, 1969.

Hon. Salter A. Hayden, Chairman, and
Members of the Banking, Trade & Com-
merce Committee,

The Senate,
Parliament Buildings,
Ottawa 4, Canada.

Honourable Senators:

RE: Bill C-165, Estate & Gift Taxes

The Canadian Construction Association
very much appreciates the opportunity of
presenting its views on the above-mentioned
Bill in the appended Brief. The matter is of
widespread and very special concern to our
Members.

The Construction Industry is Canada's largest. Virtually all construction companies, equipment distributors and builder's supply firms are family or closely-held concerns. Moreover, firms in our industry are typically short on liquid assets. This combination of factors has meant that members of the construction industry have found estate taxes and succession duties especially onerous.

The Association has stressed many times in the past the deleterious effect that death duties have on the growth and continuation of family firms and on initiative and enterprise generally. When the Budget was introduced last October, the CCA immediately expressed its appreciation of the exemption of spouses from estate taxes but also its grave concern at the increased taxes that would have to be paid in the case of many estates due to the application of higher rates on much smaller estates and the integration of estate and gift taxes. A series of representations have subsequently been made on behalf of the industry.

The main points contained in these submissions have already been dealt with in detail during the Senate Debate following the Bill's

first reading. It was therefore concluded that a lengthy treatment of them in the appended brief was unnecessary. The Association would like however, to stress at this hearing the application of these general principles to the construction industry, rather than to the specific wording and administrative aspects of the Bill.

All of which is respectfully submitted,

(Signed) S. D. C. Chutter
General Manager

(signed) M. Stein
President

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1. *Summary of Recommendations*

1. *That the previous schedule of estate taxes be maintained pending further study:*

Such action would:

(a) permit the consideration of estate taxes in the light of other proposed tax reforms to be included in the Federal Government's White Paper in a month or so's time.

(b) enable the elements of relief contained in Bill C-165 which enjoy widespread support, such as the exemption for spouses and the option of tax payment in

instalments, to be enacted. (The option of using either the previous or new exemptions until next August has already been granted).

(c) permit discussions with the Provincial Governments who currently receive up to 75% of estate tax gross revenues and in several cases are committed to a policy of rebating their shares or have it under serious consideration.

(d) afford some measure of assurance to members of family firms who are adversely affected by the new schedules of estate and gift taxes.

2. *That the passage of closely-held companies from one generation to another be allowed without attracting estate taxes so onerous that they constitute a major factor in selling or closing down such firms.*

In this regard, it is again suggested that serious consideration be given to an Ontario Economic Council proposal that the value of shares of private Canadian corporations be exempted from estate tax when passed to members of the immediate family. (Subject to their not being sold for a minimum period of ten years and other safeguards).

2. Size and Nature of the Construction Industry

The Construction Industry is Canada's largest and operates in all sections of the country. The value of the construction program this year is estimated to be some \$13.3 billion. (Federal Government's White Paper, "Public and Private Investment, Outlook 1969"). Construction outlays in Canada have on average accounted for roughly one-fifth of the Gross National Product. They now provide jobs in construction operations to the year-round equivalent of some 600,000 Canadians and to an even larger number engaged in the manufacturing, transporting and merchandising of construction materials, components and equipment.

D.B.S. estimates that over 80% of the construction program is carried out by contractors. The balance is executed by Owners ranging from those with sizeable construction crews to the 'do-it-yourself' individual. Even where prime contractors are not used, the construction materials, components and equipment are supplied by private firms. Moreover, equipment may be rented from private firms and some of the construction work to let specialty contractors. The trend is towards increasing use of the Contract Method.

The family firm or one which is "closely-held" appears to have characteristics that are especially appropriate for the construction industry. All but a handful of the general contractor, trade or specialty contractor, equipment distributor and builders' supplier firms are in this category. Many are sizeable concerns with annual volumes of business amounting to millions of dollars. Even some of those which are publicly listed are still controlled and operated by the founding family. A good many of the firms manufacturing construction products are also family or closely-held firms.

The very high proportion of such companies in the construction industry is obviously due in large measure to the facts that entry into the industry is easy and that many firms are small or medium-sized. And yet, as mentioned above, there are also a sizeable number of multi-million dollar firms that are family enterprises. Capital investment in equipment etc. is often heavy. Construction is a high risk business with many hazards. Competition for work is extremely keen. These factors are such that a high degree of personal financial stake and involvement in the management of construction companies seem to be particularly important elements in their success. Similarly, many large manufacturing concerns as a matter of policy select family firms to act as their distributors in order to have the same qualities of aggressive, personal operation.

The construction program is made up of approximately 60% building construction, of which half is residential construction, and 40% engineering construction. The high degree of specialization is reflected by the abundant use of sub-contractors and sub-sub-contractors. This and the fact that those directing the operations of each specialist contractor have a personal incentive to see that the work is carried out as quickly and economically as possible, have been cited as the main reasons why construction work is carried out faster and with a smaller on-site labour force in North America than in Europe.

3. CCA Policy Statement on Estate Taxes

For many years the Association has contended that the benefits to the state of the relatively small revenues derived from death duties have been more than offset by their in-

herent deterrents to initiative and economic expansion. Accordingly it was recommended that they be abolished and that, for immediate relief, the exemptions for estate taxes be raised to \$100,000 and that an option be provided for the deferment for one year of the evaluation of an estate.

At the last CCA Annual Meeting (Montreal, January, 1969) the views of the Association were incorporated in the following Statement of Policy adopted by delegates at the closing session: "Estate taxes and succession duties work to the detriment of family-owned businesses by preventing them from being passed on in viable form. At the same time, they encourage the removal of large capital holdings together with managerial ability from the country with consequent hardship to employees. It is therefore recommended that estate tax be amended to provide for the passage of family-owned enterprises to members of the immediate family."

4. Difficulties Experienced By Construction Industry Firms Due to Death Taxes

It has been recognized by the Minister of Finance that estate taxes place a special burden on family firms and on estates in which the major assets are not liquid. Both factors are the norm in the construction industry. The two main assets of a contracting firm are usually know-how and equipment. Neither are liquid in nature. Moreover, the firm may well also have considerable indebtedness.

The combination of these conditions has caused considerable problems in the continuation of the typical construction firm. Indeed, the very prospects of having to pay estate taxes and succession duties have been an important factor in the sale of firms in the construction industry. It should be noted that there is normally a very limited market for shares of construction firms and that potential purchasers are often only interested if they can acquire a controlling interest.

In addition, difficulties have frequently been experienced in arriving at the proper value of a share in a construction company. Very few are listed. Often the death of a principal shareholder will in itself have a very marked effect on a share's value. That such evaluations can only be arbitrary decisions is reflected by the fact that there are often appreciable differentials between those established by Federal estate tax officials and Provincial succession duty officials.

The above has occasioned serious problems in the past. The provisions of Bill C-165 will further increase the estate tax problems in the case of many members of the construction industry inasmuch as the rates of tax have been increased so that, for example, the 50 per cent rate will apply on estates of \$300,000 and gift taxes are to be integrated with estate taxes.

A \$300,000 estate is not a large one, relatively speaking, in modern times. Moreover, the integration of gift taxes with estate taxes and the continuation of inflation will likely mean a trend towards an increased number of estates of this size and over. The 50 per cent rate did not previously apply to estates in Canada until they were \$1,550,000 and it is understood that it applies in the United States only when the \$2,500,000 level is reached. Thus the incidence of the tax is much greater on sizeable estates than in the past and it is very considerably out of line with that levied in the U.S.A.

Accordingly, deep concern has been expressed over the increased problem that the sons in established family firms will face when both their parents die, in term of being able to carry on a business which has little in the way of liquid assets. The exemption afforded to spouses gives relief but it may be of short duration and be more than offset by the higher rates of estate taxes. In some cases the head of a family firm is already a widower.

Similarly, the option of paying estate taxes over a period of years will also be helpful in a number of cases. However, the fundamental question is really whether sizeable sums of money can be paid—even over a five-year period—and still be able to operate the company. Incidentally, the Federal Government's position as a preferred creditor in these circumstances will reduce the ability of construction companies to obtain surety bonds which are required by the Federal Government and many other Owners as a condition of being awarded a contract.

In the past the schedule of rates for estate taxes have been changed infrequently. It is greatly feared, therefore, that if the increased rates of tax contained in Bill C-165 are enacted by Parliament they will likely not be subject to review or revision for a lengthy period. Moreover, there is no knowledge at this time of the Federal Government's intentions with respect to the recommendations of the (Carter) Royal Commission on Taxation. If,

by chance, a capital gains tax is imposed and a deemed capital gain held to occur at time of death, the whole impact and problem of death taxes with respect to the continued operation of family firms with little liquidity would be escalated still further.

The Association is aware that the Carter Commission stated that there was nothing special about family-owned firms that necessarily made them more efficient than others and that a study commissioned by it on Death Taxes stated that there was not much factual evidence to support the contention that such taxes caused family firms to sell out either to large corporations or to foreign interests or to both. With regard to the first opinion, the Association contends strongly that family firms do seem to be well-suited to carry out most construction operations. With regard to the second point, it is not known if the construction industry was included in the authors' study. We do know, however, that our industry has faced serious problems with respect to death taxes in the past leading to sell-outs. The future prospects are for more of this due to higher taxes under the provisions of Bill C-165.

Up until now, the references to difficulties caused by estate taxes have been related to those experienced by members of the family paying them. The position of company employees is often of sincere equal concern to those operating family firms. In many cases these employees have worked most of their adult lives in helping the business to operate and expand. The incidence of onerous death taxes on those operating a family firm will either restrict its operations or lead to its sale or closing down. Alternatively, the prospects of paying death taxes also lead to sell-outs. In the former case where the company business is curtailed the long-term employee may well suffer by way of reduced bonuses, pay increases or scope for advancement. If the firm is sold or closes down, employment in a similar position is by no means guaranteed and there frequently would be losses in terms of fringe benefits.

Another problem caused by the prospects of high rates of death taxes is one experienced by the country as a whole. Reference here is made to the departure of successful executives to "tax havens" or to other regions where the incidence of income and death taxes is lower than in Canada. The capital they take with them constitutes an

appreciable loss but perhaps of even greater concern is the loss of executive ability in the persons departing. Their talents and drive are also sorely needed and they may well be a decade or more before normal retirement age.

5. Deterrents to Establishment, Operation and Expansion of Businesses

The Association has no desire to indulge in extreme talk on the deterrent effect which taxes in general or death taxes in particular have on incentives. At the same time, it is believed that greater recognition should be given by the Federal Government to the effects that they have on decisions related to the establishment, operation and expansion of businesses. And it is largely upon the initiatives shown by these enterprises that Canada's economic development and the revenues of governments are based.

It is doubtless true that people are more aware of income taxes than of death taxes. For one thing, payment of income taxes is an everpresent experience. Yet it is possibly due to this awareness of income taxes that causes members of our industry to be especially concerned about death taxes. After having paid corporation income tax and other business taxes and having ploughed back hard-won earnings into the business, the knowledge that they are not free to dispose of their personal savings (notwithstanding the fact that they have borne high rates of personal income tax) causes special resentment.

Accordingly, it is not so much a question of the number of estates which attract the higher rates of tax as it is the effect of the prospects of such taxes in the future on *present* investment and other business decisions. Will a capital outlay be cancelled on the grounds that it may well cause estate tax problems by reducing company liquidity? Will a new business venture or expansion be decided against on the basis that net returns after income and death taxes make the risk involved unattractive.

The number of people who attempt to create and perpetuate businesses in Canada is relatively few. Risk capital and enterprise are urgently needed. Is it worth risking a reduced incentive for the expansion or continued operation of their firms for the relatively small net amount of tax revenues that the higher rates of tax on estates and gifts will bring? Psychological speculation on entre-

preneurial motivation is a luxury that this country cannot afford.

As mentioned, construction is a high risk industry. Years of effort and long hours of labour may go unrewarded or the build-up of company resources wiped out by conditions on one or two contracts. Fluctuations in the construction cycle are marked. Weather and terrain can cause serious problems. Competition is high and the casualty rate is heavy. When times are tough, the employers may pay themselves less than their employees to keep the company from going under. For those who succeed, however, the rewards may be high. This is a powerful incentive.

It is not only vital that there be sufficient incentives to encourage people to establish businesses but also to expand them. Conversely, it is most undesirable if those who have built up a successful family or closely-held firm know that its future operations may well be in jeopardy because of death taxes. Economists predict that the demands to be placed on the construction industry for its services are due to be increased very greatly during the balance of the century. Its growth should be encouraged, not deterred. The risks contained in the new estate tax schedule of rates would seem to be out of all proportion to the revenue involved.

6. *Conclusions and Recommendations**

Several of the Provincial Governments have already recognized the undesirable features of high death taxes. Two rebate their 75% share of gross estate tax revenues; others plan to do so. In such regions capital investment, business expansion and the retention of successful executives have been encouraged. In view of this trend, it would seem inconsistent, to say the least, to proceed with legislation which (while affording measures of relief in some respects) imposes higher taxes on many estates.

Moreover, it is difficult to segregate this one area of tax reform from all of the others. In view of the fact that the Federal Government is soon to publish a White Paper on Tax Reform, it would seem only reasonable to defer enacting at least those portions of Bill C-165 which involve higher taxes until the White Paper can be studied.

The Association has in the past drawn attention to a recommendation in a report

published by the Ontario Economic Council which is designed to allow the passage of closely-held corporations from one generation to another or to other members of the immediate family without the attraction of estate taxes, or at least that a significant reduction in the rate of tax be allowed in such cases:

"That where more than ten percent of the issued and paid-up capital of a private Canadian corporation possessing assets of which not more than ten percent are securities of public corporations or government is represented by shares owned by a deceased at the time of his death, the value of such shares be included in determining the rate of transfer tax to be applied to other estate assets, but such value be exempted from transfer tax unless such shares are sold within a period of ten years."

Such a measure would facilitate the growth of Canadian enterprises and it is recommended that it be given serious study and that it be expanded to include non-corporate enterprises.

When the exemption for spouses from estate tax was announced in the Budget Address last October, reference was made to the fact that the wife had often played a major part in the development of an estate. The same is true of many sons or nephews who have devoted many years of their lives to the building up of a family business in the construction industry. This fact deserves full consideration.

EXCERPTS FROM LETTERS SENT TO THE CANADIAN CONSTRUCTION ASSOCIATION

"The key problem in a small public company is maintaining continuity of management on which the company's survival depends. The effect of this new legislation is to make the continuation as a family company very improbable, since the only certain method of securing continuation of management and consequent avoidance of disruption of employment for many hundreds of permanent employees is to sell out or merge. This abhorrent alternative *would* have to be faced by the executors of the family estate following a common death, since it is very improbable

* cf. also page 46.

that sufficient liquidity can be secured or retained within the estate to offset the pyramiding tax effect."

"I think, in a lot of cases, if the people find that the full implementation of these proposed laws is now in effect, the drive to expand one's business will come to a halt, for there is no sense in building your firm up with more assets to carry out more work, if, in the end, you have to sell most of the assets to pay the taxes and your heirs are left high and dry.

In relation to my own situation, if there are no modifications in the new law, then I will consider the situation and probably convert all my assets to cash and say, "That's it". When I lose the right to do with my money as I see fit, after all the taxes I have paid to keep it, and then find it is not mine after all, where is the incentive?"

Yours truly,

"The writer has just turned over control of Universal Concrete Accessories, Limited to a U.K. Company. The prime factor behind this decision was concern about estate duties.

By way of explanation, our Company, incorporated in 1950 from small beginnings has operated effectively, although volume invariably has outstripped any increase in shareholder's equity. We were like many new Companies short of working capital. I owned about 80% of outstanding shares with most of my net worth represented by this and other equities of a non liquid variety. An appraisal of the new succession duties tables clearly indicated that my estate on the demise of my wife and I would indeed be vulnerable. In the circumstances I felt there was really no practical alternative but to dispose of most of my interest in Universal, should a favorable opportunity present itself. I proceeded accordingly.

The foregoing, I submit is one other example of succession duties and concern thereof influencing the sale of one more Canadian Company to non Canadian interests."

"After 25 years of working 60 to 70 hours a week the first eight years, with nothing more than one week end Saturday noon to Monday each year for a vacation, all public holidays were full days work for the writer.

After the return from service of our son, who also then worked 60 to 70 hours a week, we made progress by hard work and holding all expenses as low as possible and in the paying of several hundred thousand dollars to our Government. In the words of our Banker, we were doing a wonderful job for our Government.

Our son who is half the business, carries a heavy insurance to cover succession duties which really become part of his estate.

Should this change come into effect, one would be better to wind up his business, as no further earnings are needed as the writer still works hard and is in his 80th year, clear up all holdings into cash and take citizenship in another country. No doubt many will do so as the attraction to work as we have would have no value or inspiration. Surely many hundreds find themselves in the same position. By the old laws our succession duties would have been considerable."

"My family have sold building materials in Quebec and Eastern Canada for over 100 years. My brother and I took over the present firm from my father in 1920 and we own several other companies in related fields.

My son has been in the business for some time and hopes eventually to run the companies. I am a widower.

The proposed Estate Tax increase may prevent my son from acquiring my shares in the business and may force me to liquidate and/or to move out of the country. I don't want to see the firm lose its Canadian identity possibly to a U.S. corporation. I don't want to put 200 people out of work in an already depressed industry. I don't want to move my assets out of the country. However, the proposed Estate Tax increase may force me to do just these things.

I think you would develop Canada's economy far more quickly and surely by reducing and eliminating Estate Tax rather than by

increasing it. You want industry to be owned by Canadians, and yet you are forcing private companies, such as ours, to sell to Americans.

By forcing private companies to sell to Americans, or to liquidate, you are depriving

the Canadian business community of something basic that no amount of dollars and cents can replace—the daring and courageous *spirit of private initiative* responsible for developing this great country of ours.



First Session—Twenty-eighth Parliament

1968-69

**THE SENATE OF CANADA
PROCEEDINGS**

**OF THE
STANDING SENATE COMMITTEE
ON**

BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 36

WEDNESDAY, APRIL 30th, 1969

*Complete Proceedings on Bill S-33,
intituled:*

"An Act to incorporate Atlantic Mutual Life Assurance Company".

WITNESSES:

Department of Insurance: R. Humphrys, Superintendent.

*Atlantic Mutual Life Assurance Company: L. J. Hayes, Counsel. T. L.
Doyle, Executive-Director, Maritime Hospital Service Association.*

REPORT OF THE COMMITTEE

THE QUEEN'S PRINTER, OTTAWA, 1969

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Leonard
Aseltine	Desruisseaux	Macnaughton
Beaubien	Gélinas	Molson
Benidickson	Giguère	Phillips (<i>Rigaud</i>)
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Isnor	Welch
Connolly (<i>Ottawa West</i>)	Kinley	White
Cook	Lang	Willis—(30)

Ex officio members: Flynn and Martin

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, April 23rd, 1969:

"The Honourable Senator Urquhart presented to the Senate a Bill S-33, intituled: "An Act to incorporate Atlantic Mutual Life Assurance Company".

The Bill was read the first time.

With leave of the Senate,

The Honourable Senator Urquhart moved, seconded by the Honourable Senator Smith, that the Bill be read the second time now.

After debate, and

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Urquhart moved, seconded by the Honourable Senator Smith, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, April 30th, 1969.
(39)

At 10.30 a.m. the Standing Senate Committee on Banking, Trade and Commerce proceeded to the consideration of:

Bill S-33, "An Act to incorporate Atlantic Mutual Life Assurance Company"

Upon motion, it was *Resolved* to print 800 copies in English and 300 copies in French of the proceedings of the Committee on the said Bill S-33.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien, Blois, Carter, Connolly (*Ottawa West*), Cook Croll, Desruisseaux Flynn, Gelinas, Giguere, Haig, Hollett, Isnor, Kinley, Leonard, Macnaughton, Molson, Phillips (*Rigaud*), Thorvaldson, Walker, Welch and Willis. (24).

Present, but not of the Committee: The Honourable Senators Connolly (*Halifax North*), Fergusson, Inman, Macdonald (*Cape Breton*), Smith and Urquhart. (6)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The following witnesses were heard:

Department of Insurance:

R. Humphrys, Superintendent.

Atlantic Mutual Life Assurance Company:

L. J. Hayes, Counsel.

T. L. Doyle, Executive-Director, Maritime Hospital Service Association.

Upon motion, it was *Resolved* to report the said Bill without amendment.

At 10.45 a.m. the Committee proceeded to the next order of business.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, April 30th, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill S-33, intituled: "An Act to incorporate Atlantic Mutual Life Assurance Company", has in obedience to the order of reference of April 23rd, 1969, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

EVIDENCE

Ottawa, Wednesday, April 30, 1969.

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-33, to incorporate Atlantic Mutual Life Assurance Company, met this day at 10.30 a.m. to give consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

Upon motion, it was *resolved* that a verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 copies in French be printed.

The Chairman: Mr. Humphrys, the Superintendent of Insurance, is here, and we have representatives of the counsel for the company present. Our usual procedure is to hear Mr. Humphrys first. Would you come forward, Mr. Humphrys, please?

Mr. R. Humphrys, Superintendent of Insurance: Mr. Chairman and honourable senators, the purpose of this bill is to incorporate a new life insurance company with its head office in Moncton. The sponsors of the company are the Maritime Hospital Service Association, which is an association in the Maritime provinces that provides hospital benefit insurance and medical services benefit insurance for a large number of subscribers. It is more familiarly known under the general term of "Blue Cross" or "Blue Shield", which term is used across the country for many similar associations.

The Association desires to incorporate this life insurance company to enable it to provide for its subscribers a more extensive package of benefits than it can now provide. Many of the subscribers are employee groups, and they wish to be able to provide for them life insurance benefits and also disability benefits in the sense of continuation of weekly or monthly income in the event of disability.

Some of the fields of activity of the Association are being narrowed, of course, by the introduction of Government plans of hospitalization and the prospect of the introduction of medical care plans on a governmental basis.

The Maritime Hospital Service Association is a Nova Scotia organization, and is subject to the laws of Nova Scotia. It has over 400,000 subscribers, and assets at the present time of about \$15 million, and a substantial periodic subscription income of about \$11 million a year.

The bill before you will incorporate a mutual life insurance company. This bill is in substantially the standard form used for incorporating life insurance companies, but since this is to be a mutual company there is a slight difference. There is no capital stock as such, but the bill provides for the establishment of a guarantee fund, and it provides that the company is not to start business until the guarantee fund is at least \$1 million. This guarantee fund will take the place of initial capital.

The bill provides that the new company, if it is formed, will be able to accept contributions from the Maritime Hospital Service Association up to the amount of \$1 million to the guarantee fund, and that this guarantee fund will stay in the company as protection for the policy holders. It may be repaid to the Maritime Hospital Service Association when the directors consider that it is convenient or desirable for the mutual company, but subject to the approval of the Superintendent of Insurance, so that the interest of the policyholders will be protected.

The company formed will have for its members the policyholders. Each policyholder will have a vote, but so long as any part of this guarantee fund remains in the company and not repaid to the Maritime Hospital Service Association, that Association will have a

vote. It will have one vote for each one thousand dollars of the guarantee fund that is not repaid.

Any member of the company is eligible to be a director, and this bill provides that all policyholders will be members, and also the members of the Board of Trustees of the Maritime Hospital Service Association will be considered as members, and thus will be eligible to be elected as directors.

The company will have the power to issue life insurance, personal accident insurance, and sickness insurance, and in all other respects will be subject to the Canadian and British Insurance Companies Act.

There were some questions raised in the debate on the motion for the second reading of this bill in the Senate in respect of the authority of the Maritime Hospital Service Association to make this investment in the establishment of a life insurance company. This authority was specifically granted to the Association by special legislation in the Legislature of Nova Scotia.

Mr. Chairman, those are all the remarks I have to make on this bill.

The Chairman: Are there any questions that the members of the committee wish to ask Mr. Humphrys?

Senator Flynn: Mr. Humphrys, you mentioned legislation passed by the Legislature of Nova Scotia which permits the Association to make this contribution. Is this recent legislation?

Mr. Humphrys: Yes, sir, it was passed this year.

Senator Flynn: And was it for the particular purpose of facilitating the incorporation of this life insurance company?

Mr. Humphrys: It was for that specific purpose.

The Chairman: Do you mean it was for the purpose of permitting this contribution to the guarantee fund?

Senator Flynn: Yes. If this Association ceases to operate with medicare coming into existence, to whom would the assets of the Association go?

Mr. Humphrys: Senator, I am not thoroughly familiar with the constitution of the Maritime Hospital Service Association. My understanding is that the members of the association

have the voting rights, and I think there are over 400,000 of them. If the association were to be wound up I cannot say positively whether the assets would be distributed among those members, but I do not know who else would have any right or title to them. I should think that probably if it happened it would be another case of going to the legislature with respect to solving the problem. Mr. Hayes, the legal representative, is here, and he may be able to answer more positively than I any questions relating to the constitution of the Association.

The Chairman: I notice, Mr. Humphrys, with respect to Senator Flynn's question, that clause 10(2) of the bill talks about contributions and the authority to make repayment of them, which would indicate that there must be intended some right in the people who made the contributions to have them refunded at some stage.

Mr. Humphrys: That is the intention, Mr. Chairman. It is established as a mutual company, and the broad intention is that when the time comes that the company has increased its strength to the point that it can get along without this starter fund the money will be repaid to the Association. However, this is at the discretion of the directors of the company, and it requires also the consent of the Maritime Hospital Service Association. But, while the fund is in the life insurance company it is there in the sense of an investment of the association since the life insurance company can pay interest on the amount of the fund.

Senator Flynn: There is no reference in this bill to the new company's obtaining contributions from the Maritime Hospital Service Association. Are these clauses which refer to the association of the essence of the bill?

Mr. Humphrys: They are essential to the bill because these are the clauses that enable the company to obtain an initial guarantee fund to protect the policyholders. It would be quite dangerous for a company to start issuing life insurance policies with no assets at all. In getting this amount of \$1 million to start with they have this as a margin of protection for the policyholders as soon as they start business. Therefore, these clauses enabling the new life insurance company to get, in a sense, a capital fund to begin with are essential. The rest of the bill is in standard form for incorporating a life insurance company.

Senator Flynn: Without this contribution they would not be on safe grounds in beginning operations?

Mr. Humphrys: It would not be permitted to begin its operations unless the contribution were made.

The Chairman: Are there any other questions of Mr. Humphrys?

Senator Kinley: I believe a very successful company in Nova Scotia, I think the Maritime Insurance Company, has been taken over by a big American company. It comes at a significant time. Are there any unusual provisions here or is this in accord with insurance legislation generally throughout Canada? Are there any innovations here?

Mr. Humphrys: The only unusual provisions are the ones described dealing with the contribution of a guarantee fund rather than the normal case of the provision of initial capital stock. We do have a precedent for exactly this type of bill. A few years ago a mutual life insurance company was formed on the sponsorship of the Wawanesa Mutual Insurance Company. They carried out the same procedure and the bill was in similar form. The Wawanesa Mutual Insurance Company was a mutual company and they wanted the life insurance company to be mutual; they started it with a contribution guarantee fund of \$1 million, with similar conditions to this, with repayments to the guarantee fund when the life insurance company became well established.

Senator Kinley: The new medicare would have no connection with this new insurance company in the province?

Mr. Humphrys: No direct connection, no. It would have an effect on their business.

Senator Kinley: You see, we are getting medicare, but the unions always want extra and it may be that this insurance company will have an opportunity there. I do not know.

The Chairman: That is another question.

Senator Molson: Is there any possibility of a conflict in connection with this guarantee fund between the interests of the members of the Hospital Service Association and the Mutual Life Insurance Company? Can you envisage any situation in which the members feel they must have their \$1 million and the

insurance company could not exist without it so that a strain is set up?

Mr. Humphrys: One could imagine a circumstance such as you describe arising. However, I think it is controlled here in that repayment of the guarantee fund is only at the discretion of the directors of the life insurance company and is subject to the approval of the Superintendent of Insurance. I think there are sufficient controls to insure that, notwithstanding the desire of the association to withdraw the money, the money could not be withdrawn unless the interests of the life insurance company were well protected.

Senator Molson: I am not a lawyer, but what would happen in the case of a bankruptcy or winding up, or any other similar situation?

Mr. Humphrys: I believe the same comments would hold, because it says:

The contributions so received may be refunded in whole or any part at such times and in such instalments as the directors...

That is the directors of the life insurance company...

may from time to time determine, but no such refunds shall be made unless approved by the Superintendent of Insurance nor unless Maritime Hospital Service Association agrees to accept the refund.

I therefore think there are controls on it, and even in the event of the bankruptcy of the association I do not think the liquidator could force the association to pay back the money. I think the liquidator would have a contingent asset here if and when the directors of the life insurance company thought they could repay the money.

The Chairman: Mr. L. J. Hayes, counsel for the company, is here, and also Mr. T. L. Doyle, the executive director of Maritime Hospital Service Association. Are there any questions the committee would like to ask them?

Senator Phillips (Rigaud): I would like to put one question to Mr. Hayes. Where do you get the power of the directors to pass a necessary by-law to call meetings from year to year? I see you have provisional directors, but I do not seem to find any procedure for

carrying that out. Do you have provision? Does it come under section 12 of this or any other act?

Mr. Humphrys: I could answer that. Those provisions are found in the Canadian and British Insurance Companies Act.

Senator Phillips (Rigaud): That is what I thought.

Mr. Humphrys: The general company clauses.

Mr. L. J. Hayes, Counsel, Atlantic Mutual Life Assurance Company: Section 12 of the act.

Senator Flynn: May I put the same question that I put to Mr. Humphrys? If the association ceased to operate to whom would the assets be distributed?

Mr. Hayes: We did consider this question and, as Mr. Humphrys indicated, I think one of two things would happen. Either an application would have to be made to the court to determine whether it was just the present shareholders, or the present subscribers, who were entitled to all the assets, or whether in some way any past subscribers who may have contributed to building up the assets would have any claim; or, perhaps more likely, we would have to go back to the legislature in Nova Scotia and ask them to consider the distribution.

Senator Flynn: It is a non-profit organization?

Mr. Hayes: It is a non-profit organization.

Senator Flynn: You refer to the present subscribers. What are they subscribing to?

Mr. Hayes: They are policy holders, in effect.

Senator Flynn: What kind of policy?

Mr. Hayes: The medical benefits that they provide, Blue Cross or Blue Shield.

Senator Flynn: Over medicare?

Mr. Hayes: Yes. Some of the benefits certainly are over and above what medicare now provides.

Senator Flynn: The association is continuing and complements the medicare benefits?

Mr. Hayes: Yes, that is correct, although at the present time, of course, there is some

redundancy. This is why the company now feels they should move into these other areas to increase their activities and supplement what medicare now provides.

Senator Flynn: The life insurance company would be a subsidiary of the association?

Mr. Hayes: In effect to some extent that is right; they would be associated.

Senator Smith: What steps were taken by the management of Maritime Hospital Service Association prior to your going to the Nova Scotia legislature to ask them to pass a bill taking \$1 million surplus away from the control and putting it into the hands of another company, over which as I understand it the present subscribers, or the past subscribers in particular, would have no control at all, to secure the opinion of at least the subscribers?

The Chairman: There is a statute of the Province of Nova Scotia that provides certain authority. I think we have to accept that. I doubt if our inquiry can go into what things encouraged the legislature of Nova Scotia to pass the bill it did. We might be getting on dangerous ground.

Senator Smith: Mr. Chairman, I only ask this question in order to get ready for the next one. I am sure the witness has the information.

The Chairman: What is the real question?

Senator Smith: The real question is what attempt was made or what steps were taken to at least consult with the subscribers of the Maritime Hospital Service Association to applying to the Nova Scotia Legislature for the bill, which was passed at this session?

The Chairman: I think you might ask who joined in the request for this legislation. That would give you the answer that you wanted, would it not?

Senator Smith: It may not be the answer that I want; that is your answer.

The Chairman: Mr. Hayes, would you care to answer that question?

Mr. Hayes: I should say, first of all, senator, that historically Maritime Hospital Service Association has extended its benefits from time to time and moved into different areas. Now, on each occasion when this was done there was no hold taken of the subscribers for the simple reasons there are, at the

present time, 450,000 subscribers, many of whom are under various group policies, and this type of thing. The practical difficulties are enormous, as you can imagine. Whenever the company moves into a new field the decision is basically taken by the trustees, who are all members themselves and feel they represent the subscribers.

Senator Molson: How many trustees are there?

Mr. Hayes: There are 28 at the present time.

Mr. Doyle: Eight of whom are subscriber nominees.

Senator Smith: What was that last sentence?

Mr. Hayes: Eight of whom are subscriber nominees.

Mr. Doyle: Let me explain. On the board of 28 there are eight seats, one for each of the

provincial governments. There are eight seats for medical nominees of the four medical societies of the province; there are eight hospital nominees named by the eight hospital associations, and eight subscriber nominees who are non-medical and non-hospital people chosen by the board. This board serves the organization without remuneration of any kind.

Senator Thorvaldson: That is democratic enough for me.

Senator Smith: That answers my question.

Senator Walker: With that explanation of the bill by the Superintendent, can I move the question be put?

The Chairman: Shall the committee report the bill without amendment?

Hon. Senators: Agreed.

Whereupon the committee proceeded to the next order of business.



First Session—Twenty-eighth Parliament

1968-69

THE SENATE OF CANADA

PROCEEDINGS LIBRARY

OF THE

STANDING SENATE COMMITTEE

ON

BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 37

WEDNESDAY, APRIL 30th, 1969

Complete Proceedings on the Messages from the House of Commons,

disagreeing with amendments made by the Senate to:

Bill C-155, "An Act to provide compensation to farmers whose agricultural products are contaminated by pesticide residue, and to provide for appeals from compensation awards"; and

Bill C-157, "An Act to regulate products used for the control of pests and the organic functions of plants and animals".

WITNESSES:

Department of Agriculture: The Honourable H. A. Olson, Minister.
S. B. Williams, Deputy Minister.

REPORTS OF THE COMMITTEE

The Queen's Printer, Ottawa, 1969

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Lang
Aseltine	Desruisseaux	Leonard
Beaubien	Gélinas	Macnaughton
Benedickson	Giguère	Molson
Blois	Haig	Phillips (<i>Rigaud</i>)
Burchill	Hayden	Savoie
Carter	Hollett	Thorvaldson
Choquette	Isnor	Walker
Connolly (<i>Ottawa West</i>)	Kinley	Welch
Cook		White
		Willis—(30)

Ex officio members: Flynn and Martin

(Quorum 7)

ORDERS OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, April 22nd, 1969:

“A Message was brought from the House of Commons by their Clerk in the following words:—

WEDNESDAY, April 2, 1969.

Ordered,—That a Message be sent to the Senate to acquaint Their Honours that this House disagrees with the amendment made by the Senate to Bill C-155, An Act to provide compensation to farmers whose agricultural products are contaminated by pesticide residue, and to provide for appeals from compensation awards, for the following reasons:

The amendment changes the principle of the Bill so that compensation is payable even if the pesticide residue resulted through the fault of a pesticide manufacturer or another person. It makes it a responsibility of the Minister to pay and carry court action against a third party. It would also remove the precise requirement that the Minister may require a farmer to take action to reduce losses before paying compensation, such as washing, trimming, changes in storage etc. If this requirement is removed, it would substantially increase the costs involved in applying the provisions of the legislation. The amendment would also increase the possibility of marginal or frivolous claims.

Attest.

ALISTAIR FRASER,

The Clerk of the House of Commons.

The Honourable Senator Hayden moved, seconded by the Honourable Senator Bourget, P.C., that the Message be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.”

“A Message was brought from the House of Commons by their Clerk in the following words:—

WEDNESDAY, April 2, 1969.

Ordered,—That a Message be sent to the Senate to acquaint Their Honours that this House disagrees with the amendment made by the Senate to Bill C-157, An Act to regulate products used for the control

of pests and the organic functions of plants and animals, for the following reasons:

It is difficult to foresee all the ramifications of an appeal procedure provided by cross reference to another proposed statute that was substantially amended by the House after the amendment to this bill was made by the Senate;

The amendment provides for a review procedure that was considered by the House of Commons and rejected; and

Any manufacturer, under the proposed statute without this amendment, would have not only an opportunity, but an obligation to present in detail all required technical information, and, in addition, a review procedure already is provided for all cases where goods are detained.

Attest.

ALISTAIR FRASER,

The Clerk of the House of Commons.

The Honourable Senator Hayden moved, seconded by the Honourable Senator Bourget, P.C., that the Message be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.”

ROBERT FORTIER,

Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, April 30th, 1969.

(40)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met at 9.30 a.m. this day to consider:

Messages from the House of Commons disagreeing with the amendments made by the Senate to Bills C-155 and C-157.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien, Blois, Carter, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Flynn, Gelinas, Giguere, Haig, Hollett, Isnor, Kinley, Leonard, Macnaughton, Molson, Phillips (*Rigaud*), Thorvaldson, Walker, Welch and Willis. (24)

Present, but not of the Committee: The Honourable Senators Connolly (*Halifax North*), Fergusson, Inman, Macdonald (*Cape Breton*), Smith and Urquhart. (6)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The following witnesses were heard:

Department of Agriculture:

The Honourable H. A. Olson, Minister.

S. B. Williams, Deputy Minister.

After discussion and upon motion it was *Resolved* to recommend that the Senate *do not* insist upon its amendment to Bill C-155.

After discussion and upon motion it was *Resolved* to recommend that the Senate *do not* insist upon its amendment to Bill C-157, but that it *insist upon the principle* of such amendment and that a substitute amendment be substituted therefor, as can be found by reference to the Report of the Committee immediately following these Minutes.

At 10.30 a.m. the Committee proceeded to the next order of business.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORTS OF THE COMMITTEE

WEDNESDAY, April 30th, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Message from the House of Commons disagreeing with the amendment made by the Senate to Bill C-155, intituled: "An Act to provide compensation to farmers whose agricultural products are contaminated by pesticide residue, and to provide for appeals from compensation awards", passed by the Senate on March 25th, 1969, has in obedience to the order of reference of April 22nd, 1969, examined the said Message and now reports as follows:

Your Committee recommends that the Senate do not insist on the said amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

WEDNESDAY, April 30th, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Message from the House of Commons disagreeing with the amendment made by the Senate to Bill C-157, intituled: "An Act to regulate products used for the control of pests and the organic functions of plants and animals", passed by the Senate on March 25th, 1969, has in obedience to the order of reference of April 22nd, 1969, examined the said Message and now reports as follows:

Your Committee recommends that the Senate do not insist on the said amendment, but do insist on the principle of the said amendment and that the following amendment be substituted for the said amendment:

Page 4: Strike out paragraph (d) and substitute therefor:

"(d) respecting the registration of control products and of establishments in which any prescribed control products are manufactured and prescribing the fees therefor, and respecting the procedures to be followed for the review of cases involving the refusal, suspension or cancellation of the registration of any such product or establishment;"

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

EVIDENCE

Ottawa, Wednesday, April 30, 1969

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred the Message from the House of Commons disagreeing with the amendment made by the Senate to Bill C-155, to provide compensation to farmers whose agricultural products are contaminated by pesticide residue, and to provide for appeals from compensation awards, met this day at 9.30 a.m. to consider the said Message and the Message respecting Bill C-157, Pest Control Products Act.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: We have a number of bills before us this morning. The first two are bills C-155 and C-157. At our previous hearings we had a motion that the proceedings be reported and printed and that motion will continue today.

Let us deal first with Bill C-155. That was:

An Act to provide compensation to farmers whose agricultural products are contaminated by pesticide residue, and to provide for appeals from compensation awards.

If honourable senators look at the proceedings, we are not going to consider the bill as such today. What is before us today is the message from the other place indicating that our amendment was not acceptable to them, and they struck out the amendment. What we therefore direct our attention to is the amendment we made and the position in the other place when they refused to accept the amendment. The Minister of Agriculture is here today to give us whatever explanation there is in support of the message, and then we will have to make our own decision.

I should read the message giving the reasons for striking out the amendment:

The amendment changes the principle of the bill so that the compensation is payable even if the pesticide residue resulted through the fault of a pesticide manufacturer or another person. It makes it a responsibility of the Minister to pay and carry out court action against a third party. It would also remove the precise requirement that the Minister may require a farmer to take action to reduce losses before paying compensation, such as washing, trimming, changes in storage, etc. If this requirement is removed, it would substantially increase the costs involved in applying the provisions of the legislation. The amendment would also increase the possibility of marginal or frivolous claims.

I should add that the amendment we made was on this particular point in the bill. There was provision that compensation would be paid to a farmer because of pesticide residue rendering whatever food product he was growing unfit for sale. The conditions attached in that section were that it must be established that the pesticide residue did not result through the negligence of the farmer. The provision went on in part to say that the minister, if he deems it necessary, may require that as a condition of receiving compensation the farmer take action against the person who caused or contributed to this pesticide residue. The feeling of the committee was that that was an onerous burden to put upon the farmer, that the most the farmer should be asked to do was to subrogate his right. We therefore accordingly made an amendment requiring—

Senator Isnor: You mean the Senate committee?

The Chairman: The Senate committee. We made an amendment requiring that if the minister deems it necessary he may require as a condition of payment of compensation to the farmer that the farmer subrogate his rights to the minister so that the minister could take action against the person who has caused the particular problem. That is the background, and the minister is here to deal with and, I assume, support the action of the other place.

The Honourable Horace Andrews Olson, Minister of Agriculture: Mr. Chairman, I think the explanation we gave in the message that was sent to the Senate in response to their amendment is self-explanatory. However, perhaps I could add to that explanation by explaining that what the Government was seeking from Parliament was the authority to pay compensation to a farmer in a case where pesticide had been used according to the instructions on the label, and where there had been a loss to the farmer occasioned by a Food and Drug Directorate order; either not the farmers' fault or indeed the fault could not be established in this rapidly changing technology with respect to pesticides. There are cases and there have been cases and we expect there may be additional ones in the future where the changes in technology could in fact establish the responsibility or at least the technical reasons for the damage which may not be apparent at the time. We, in the past, have made some *ex gratia* payments. We really did not have that specific authority from Parliament to make such payments, and we are seeking authority from Parliament so that we can. We did not envisage a situation where a farmer or anyone else would have a right, if I may confine it to the very narrow or limited context of a right, to claim compensation from the public treasury. We wanted the authority to pay this compensation, where our investigation clearly indicated that it was not the farmer's fault and that the specific responsibility could not be identified.

We would appreciate, Mr. Chairman, that the bill provide that before we can make this payment the products must have been removed from the market by another agency of the Government in this case, the Food and Drug Directorate. We believe that by accepting your amendment it may be a substantial change in the bill and indeed in the intent of the bill because it would make it obligatory for us to pay a farmer for losses resulting

from faults which, for example, may be the fault of the pesticide manufacturer. There is provision where we can make, if the minister deems it advisable—I believe this is the right word—the payment, and then ask the farmer to subrogate his rights with respect to any follow-up action to the manufacturer if that responsibility lies there. However, we think it needs to be spelled out in the bill, or at least there should be provision in the bill for the farmer to reduce his losses as much as possible.

You have mentioned washing, trimming and changes in storage and that sort of thing. We also believe that we would not like to be in a position where we would interfere with the normal course of law. If the farmer has a case against a pesticide manufacturer, we think he should take that action. The only other provision that is in there is where we would assume that right or ask the farmer to transfer that right to us, and this is where it is not clear. We could then make the proper payment or compensation and, if we deem it necessary, take further action in that respect.

Those, Mr. Chairman, are generally the reasons why we would hope that you could be persuaded to withdraw your amendment to that particular clause.

The Chairman: Mr. Minister, I notice in the beginning of the message the suggestion that the amendment which we made changes the principle of the bill. This is something that your representative raised when he was here when we were considering the bill, but frankly I have not as yet found any spot in the bill, when I relate the amendment to it, that you can say we changed the intent of the bill.

Senator Walker: As an active politician I can understand the minister saying that. I think he has made a very adequate explanation. I suggest that the bill should be restored.

Senator Molson: Agreed.

The Chairman: Are there any questions that you want to ask the minister? What is the wish of the committee as to how we shall deal with this? The form of report that we make must be made in this way; either we recommended to the Senate that it do not insist on the amendment which we made, or we recommend that the Senate insists on the amendment, one or the other.

Senator Walker: I so move, Mr. Chairman.

The Chairman: Those in favour? Contrary, if any? The report of the committee, then, to the Senate will be that the committee recommends to the Senate that the Senate do not insist on the amendment which it made.

Hon. Senators: Agreed.

The Chairman: Honourable senators, in connection with Bill C-157, you will recall there was no provision for appeal from any order or direction that might have been made in connection with a product that was being seized or detained. I think it was Senator Pearson who raised the question in the Senate, and then in committee, and we attached an amendment providing for an appeal.

In the shortness of time the form of the amendment was simply to provide that the appeal procedure, *mutatis mutandis*, would be the appeal procedure in the Hazardous Products Act. The objection in the Commons when this appeal procedure was struck out was stated as follows:

It is difficult to foresee all the ramifications of an appeal procedure provided by cross-reference to another proposed statute that was substantially amended by the house after the amendment to this bill was made by the Senate. The amendment provides for a review procedure that was considered by the House of Commons and rejected, and any manufacturer under the proposed statute, without this amendment, would have not only an opportunity, but also an obligation, to present in detail all required technical information. In addition, a review procedure already is provided for all cases where goods are detained.

Since the objection basically appears to be that we provided for an appeal by reference to another statute or another bill that was before the house, I asked our Law Clerk to prepare a form of an amendment which would incorporate into the bill an appeal procedure of its own. I gave a copy of this to the minister and I will read it to you shortly, but possibly we should hear the minister's point of view in relation, firstly, to an appeal procedure and secondly, to the form which I submitted to him.

The Honourable Mr. Olson: Mr. Chairman, as you have stated, and we agree, in our original message that we sent to the Senate we raised the question of cross-reference to

another bill which at that point in time had not been passed by the House of Commons and the Senate. Perhaps I could go a little further and say that that bill, the Hazardous Products Act, has in fact been amended further since your amendment was sent to the House of Commons. We believe that we have at least substantially provided for the review procedure that you envisaged in your amendment under clause 9, subsection (5) of the bill. You will perhaps recall that this matter was under debate and considered by the Standing Committee of the House of Commons on Agriculture wherein they also felt that there ought to be some kind of appeal procedure, particularly for any product that was under detention. So the bill, or that part of the bill, was amended in the House of Commons Committee to provide for appeal where any product was seized and under detention.

We have examined the appeal procedure which you have in the proposed amendment, although it has not been moved as yet; and it does meet part of the objection that we raised, in that it would spell out in this bill rather than have a cross-reference to another bill.

However, with the possible exception of cancellation of registration, it would appear undesirable to provide formally for review procedures. The Senate's proposed amendment in providing appeals where the minister exercises his necessary discretion, creates what we think is an unworkable situation.

A great many federal statutes require responsible actions of the minister in exercising decision-making powers conferred by statutes. If each of these decisions is in future to be made the object of an appeal, if all of these ministerial decisions, with the discretion that is conferred by statute, were to be the object of an appeal, it would become a very cumbersome procedure and, we think, make it virtually impossible to administer many federal statutes, including this one.

I would like to go further and suggest that, in the regulations respecting a number of other acts—such as the Fertilizer Act, for example—we have in those regulations provided an appeal procedure where there is some loss, such as having a product seized and detained or cancelled.

We think that this is the proper place to have it, because of the nature of this kind of thing, where there is rapidly changing technology related to this kind of product.

The Chairman: Mr. Minister, I notice, in connection with clause 9(5), to which you referred, this gives power to the Governor in Council by regulation to make regulations respecting the detention of any controlled product seized under this clause and power to establish procedures for the review of any seizure and detention.

If you stop there, there is power in the bill by regulation to establish procedures for review. It becomes a question of whether procedures established in that fashion should not more properly be substantive law and be in the bill itself rather than by way of regulation.

The form of the amendment which the law clerk drafted reads in this fashion, if I may take a moment and read it.

Senator Thorvaldson: This is the new amendment?

The Chairman: Yes, and even though it spells out in language pertaining to this particular bill the procedure is substantially borrowed from the procedure outlined in the Hazardous Products Bill itself, in that the title is "Board of Review" and subclause (1) of the new proposed clause 13 reads as follows:

Where any order made pursuant to this Act, in respect of which no other review procedure is provided in this Act, directly affects the rights or interests of any person, that person may, within sixty days of the making of the order, request the Minister that the order be referred to a Control Products Board of Review.

You remember that the procedure in the Hazardous Products Bill was to have a Hazardous Products Board of Review. Then, in subclause (2):

Upon receipt of a request described in subsection (1), the Minister shall establish a Control Products Board of Review (hereinafter referred to as the 'Board'), consisting of not more than three persons, and shall refer the order in respect of which the request was made to the Board.

(3) The Board shall inquire into the nature and characteristics of any control a product to which an order referred to it under subsection (2) applies and shall give the person making the request and

any other person affected by the order a reasonable opportunity of appearing before the Board, presenting evidence and making representations to it.

(4) The Board has all the powers that are or may be conferred by or under sections 4, 5 and 11 of the Inquiries Act on commissioners appointed under Part I of that Act.

(5) The Board, as soon as possible after the conclusion of its inquiry, shall submit a report with its recommendations to the Minister, together with all evidence and other material that was before the Board.

(6) Any report of the Board shall, within thirty days after its receipt by the Minister, be made public by him, unless the board states in writing to the Minister that it believes the public interest would be better served by withholding publication, in which case the Minister may decide whether the report, either in whole or in part, shall be made public.

(7) The Minister may publish and supply copies of a report referred to in subsection (5) in such manner and upon such terms as he deems proper.

This parallels the procedure in the Hazardous Products Bill. The minister receives the report, which expresses the views of the board, but it is his decision finally whether he acts on it or not.

Senator Cook: Would you read the first subclause again?

The Chairman: It reads:

Where any order made pursuant to this Act, in respect of which no other review procedure is provided in this Act, directly affects the rights or interests of any person, that person may, within sixty days of the making of the order, request the Minister that the order be referred to a Control Products Board of Review.

Senator Thorvaldson: Is sixty days the appeal period in the Hazardous Products Bill?

The Chairman: Yes.

Senator Thorvaldson: Has this amendment been referred to the minister or the officials?

The Chairman: I gave him a copy a week ago and the minister commented on it this morning.

Mr. Minister, would you care to repeat that?

Hon. Mr. Olson: Mr. Chairman, one of the problems that we have with this amendment suggested, or this procedure for review, is that it has been stated in subclause (1) where "any" order. It seems to me that this is pretty wide, it is substantially wider with respect to almost any statute that we have. It says "any" order made pursuant to this act would be subject to review.

The Chairman: Notice the qualifying words "in respect of which no other review procedure is provided in this act."

Hon. Mr. Olson: Yes, Mr. Chairman, I am aware of that, and we realize that clause 9(5) of the bill is a review procedure that is limited to a certain situation and that is where we have any product that has been seized and is under detention, and it was not our intention that all of the orders that may be issued from time to time in the administration of this act would be subject to a review procedure.

I think, too, that it should be noted that in dealing with this kind of product, these kinds of chemicals, is a highly technical matter, where you must call in to have expert advice people who are highly competent in the chemical technology that is related to whatever the product is designed for. We think that it would be perhaps a review, or could be a review, by the same people who are involved, in many cases—and in our opinion that is not desirable. Mr. Chairman, with your permission, perhaps I may be permitted to ask my deputy minister to comment on this with respect to the practical problems that we may have in trying to administer this, based on some experience that we have had.

The Chairman: Yes, Mr. Williams.

Mr. S. B. Williams, Deputy Minister, Department of Agriculture: Mr. Chairman and honourable senators, I think our problems, from our standpoint, are twofold. First of all, we feel that this bill differs greatly from the Hazardous Products Bill, in that under this bill the person is not actively selling the product and then may have his right to sell that cut off. No product can be sold as a pest control product unless it is registered by the department to start with. In that registration procedure the manufacturer is required to submit to the department detailed evidence as to, among other things, the safety and the efficacy of the product.

As Mr. Olson pointed out, these are highly technical points, particularly those in respect of efficacy.

The manufacturer, therefore, has, essentially, in applying for registration, made his case to the department and it has been assessed by a group of technical people within the department, sometimes with additional tests being carried out by the department itself, particularly those related to efficacy.

To establish a review procedure for this would, in our mind, if it is to be meaningful, mean that we would probably have to set up a duplicate, or a replicate of some sort, of the tests that have been conducted and of the technical expertise that was available for this.

These people are in very short supply and we just feel that the review situation in respect of these aspects of pesticide control would be unnecessary. We agree fully that a review procedure will be useful, if the manufacturer is, in fact, in operation and insists on selling this product for some reason and we are in the position that we feel that we should place some of his products under detention or, perhaps, that we should in fact suspend his operations. Then we believe that a review procedure is necessary, because we would hate to take that action without giving the manufacturer the right to make representations to start with.

The reason there, of course, is that this is only done, if we consider that it is a hazard to health and that it may result in a product that will be unhealthy in so far as human consumption is concerned.

So we have made provision for that aspect of the review but we have not made provision for the review of the original possible rejection of registration, which, as I say, is an extremely technical and lengthy procedure and at which the manufacturer has made very detailed representations already to the department before we can consider the application for registration.

Senator Leonard: Mr. Chairman, is it clear from what the Deputy Minister says that it is right that a provision for a board of review does now apply to registered pesticides?

The Chairman: I referred you to the authority to make regulations, under clause 9(5). That is in connection with the detention of a product, but, basically, you must apply for registration of the product and you cannot manufacture, sell, import or do anything else

unless it is registered. But there is no procedure by way of appeal or review, as I see it, in the bill, if registration is refused.

Hon. Mr. Olson: We agree with that.

The Chairman: And the department agrees that that is correct. This was the reason that that was put forward by Senator Pearson both in the Senate and in this committee. That is basic. It affects the manufacturer and whatever product he is producing or proposing to produce, and, if the rule is against his registration of the product, there is no way in which he can have it reviewed.

Senator Thorvaldson: It would appear from what was stated by the deputy minister that perhaps the same people would have to make the review who made the original rejection. In other words, because of lack of personnel and the fact that it is a very technical matter and people are not available to do these things. Is that correct?

Mr. Williams: That, basically, is what I said, sir. I also said, saving that, it would mean setting up a duplicate technical group whose sole purpose would be the review of these applications, and we feel this is unnecessary. In addition to that, I pointed out that it would be very difficult to staff it, in that we are having difficulty staffing our on-going program in respect of pesticides.

The Chairman: There is no suggestions that there is or is likely to be anything arbitrary here.

Senator Walker: With the present minister, perhaps.

The Chairman: It is a wholesome thing that, when people are proposing to make such an important decision as whether your product will be registered or not and, therefore, whether you are going to be in business or not, there does exist the possibility of a review of that decision.

Senator Molson: Is it not a fairly common situation, Mr. Chairman, with regard to all types of products—and I am not speaking particularly of pest control or hazardous products—that you have to go to a licensing authority? I do not think there is a review procedure in every case for the requests that are turned down.

Senator Thorvaldson: Were these explanations made at the time the bill was before the committee, Mr. Chairman, such as the one made by the deputy minister now?

The Chairman: No. My recollection is that we were left to our own resources, more or less, as to any provision by way of appeal. And even the draft that we had made of the appeal section, although it was accepted, was not even commented upon, although comment was invited.

So the amendment was made which we originally put into the bill providing for appeal, and that was done on the responsibility of the committee with whatever information they had at that time, and without the specific assistance of the department, although their representatives were here.

I think they felt that since they did not agree with any appeal procedure, then why should they participate in the discussion of it.

Senator Carter: Mr. Chairman, I do not think that we should be swayed by the argument that we should not have this kind of review board because the same people would be doing the review, or because there are not enough personnel to go round. You can apply that argument to almost anything to negate it.

Senator Walker: Mr. Chairman, there is no principle at stake here. This is a technical review of a product. Now, the result is going to be the same, is it not, no matter how many times it is reviewed?

The Chairman: I do not know.

Senator Walker: Well, I will ask the deputy minister. This is purely a technical review, is it not, as to the substance of the product, and there is no principle at stake here? It is just purely chemical analysis.

Mr. Williams: It is a technical review from two standpoints; safety and efficacy. Probably the more difficult one is the efficacy question, because I think you will appreciate that we do not register products and we do not allow people to advertise products unless they have proven to our satisfaction that they are efficacious for the purpose or purposes claimed. I am talking about pest control products only now. This being the case, I think you will all appreciate that this is a highly technical matter, because circumstances vary greatly across this country, and this is why I said that sometimes we supplement the information by actual investigation of work of our own carried on our experimental farm system.

Senator Walker: If you did review it, there would be nothing more disclosed than was disclosed in your original investigation, would there?

The Chairman: Senator Walker, how can this witness say, without knowing who the personnel of the board may be or what the problems are?

Senator Walker: But I understood that the people doing the review would be practically the same people who did the original work and they would be experts.

Senator Flynn: I understand that, but I suggest that neither the minister nor the deputy minister has raised any objection to the principle involved in the amendment. They said it is difficult and cumbersome, but the principle is valid. Certainly it will be difficult in the beginning to operate this system, but that is another thing. I think in the end we should be able to find a solution. I think the rights of the individual are at stake here and I do not think we should be prepared to say that we will forget this principle because the minister or the deputy minister says he will not have the personnel.

The Chairman: There is a principle involved in providing the appeal procedure itself.

Senator Walker: But the minister himself reviews it or can review it under the terms of the bill as originally submitted to us.

The Chairman: I would expect that there are problems created in connection with the application to register, that those dealing with it might refer it to the minister because he is the final authority.

Senator Walker: What we are thinking about is the one-shot aspect. I understood that originally when a decision is made it comes to you for a second view of the matter and you make a final decision.

Hon. Mr. Olson: That is in practice the way these things usually take place; if any person is not satisfied with the administration of the act with respect to these matters they then appeal to the minister. That is true. And then a report is requested and so on and this constitutes something of a review certainly, but I suppose in complete fairness I would have to say that that is not specifically provided for in the act although that happens, of course. Now the other thing of course is that the review procedure is very clear in the act where there is recourse under clause 9(5) which deals of course with the very limited situation where a product is under seizure or

detention. The provision for a review whether or not a registration has not been accepted is not provided in clause 9 at the present time.

Senator Molson: What is the wording of that clause, Mr. Chairman?

The Chairman: Clause 9(5) says:

The Governor in Council may make regulations

(a) respecting the detention of any control product seized under this section and the payment of any reasonable costs incidental to such seizure or detention, and for preserving or safeguarding any control product so detained;

etc, etc.

Senator Molson: He "may make..."

The Chairman: Yes.

Senator Molson: How about the procedure that may be demanded at that point?

The Chairman: He may make regulations but the kind of regulation and the kind of review is limited to a product which has been registered or in respect of which there is some defect, some chemical impurity or something of that kind as a result of which the department goes in and seizes the product.

Senator Molson: I think that is more important than the initial registration. Personally I would be satisfied.

Senator Kinley: Mr. Chairman, do I hear you correctly when you said if there is a refusal of a licence there was no appeal?

The Chairman: That is right.

Senator Kinley: Well I think that is a principle. You say there is no principle to the bill, but I think there is a principle there. It may have the result of making the department more careful in its decisions if there is an appeal over their head.

The Chairman: I should point out that unless there are other questions about the way in which we may proceed in dealing with this referral of the message to this committee we either report recommending that the Senate do not insist on its amendment or alternatively that the Senate should insist on its amendment and that such amendment should be couched in the following language or should be in the language, if it is acceptable, that I have read to you in the present

appeal procedure which our Law Clerk has drafted. So we either make one report or the other. Unless there are other questions from honourable senators I want to say something on the matter. I suggest that we should have a motion—

Senator Croll: I move that we do not insist on the amendment.

Senator Leonard: Mr. Chairman, I have one question before we come to that. Are there many cases of refusal of registration? Does it happen often?

Mr. Williams: I think outright refusal is a difficult thing. I think probably once or twice we have had outright refusals. Usually there are negotiations with the manufacturer about changing his claims by possibly changing his formulation somewhat or changing recommended uses or something of this nature and that then results in its being accepted although probably the original application for registration may not have been accepted in the exact form in which it was made.

Senator Leonard: That is in itself a review procedure and it goes on by negotiation.

Mr. Williams: This bill has been in effect for some years and the representatives of the Manufacturers Association attending the Commons committee dealing with the matter stated that they had no quarrel with the department in this matter, but in all fairness they did say that as a standby they would prefer to have an appeal procedure but they had worked with this for 30 years. They were asked the question themselves if they had ever had a case where they felt that harm was done to them by the department acting in an arbitrary manner and their statement was no, that they never had. There is a review procedure in these negotiations as to claims and formulation.

The Chairman: We have a motion.

Senator Flynn: Mr. Chairman, may I ask Senator Croll who moved that we do not insist on our amendment whether when we have the Ombudsman he has been talking about we should have some procedure like that to cover the rights of people?

Senator Croll: All I am prepared to say is that if Senator Flynn is prepared to vote for the Ombudsman I am prepared to withdraw the motion.

The Chairman: Have you done your trading? Do I still have a motion?

Senator Thorvaldson: I think this committee is on very sound ground in insisting upon appeals in some of these cases. I think there is a principle involved there. Consequently it is my view that if we do not insist on our amendment it is not because I think the principle we adopted the last time was bad but because we feel that the officials of the department have given an explanation indicating that no one is likely to be hurt even if we do not insist upon this appeal procedure. That is the position I take on this, but at the same time I certainly think we are right in principle.

The Chairman: Senator Croll, do we have your motion still before us notwithstanding your exchange with Senator Flynn?

Hon. Mr. Olson: Mr. Chairman, I wonder if I might make a suggestion to the committee? It seems to me that the discussion has more or less come down around the review or registration or a cancellation or a suspension of a registration and that there is no review procedure in that because we think, you have been persuaded that there is sufficient in the act now to take care of goods that have been seized and are under detention.

In our view, the amendment you have suggested—that is, the Board of Review, where any order—is too broad because it would include any order involved with the administration of this act.

If you would consider amending clause 5(d)—that deals with the making of regulations respecting the registration of control products and of establishments in which any prescribed control products are manufactured and the prescribing of fees—with these words:

(d) respecting the registration of control products and of establishments in which any prescribed control products are manufactured, prescribing the fees therefor, and respecting the procedures to be followed for the review of cases involving the cancellation or suspension of the registration of any such product or establishment.

I think that would cover the point.

The Chairman: That would come in where, do you suggest?

Hon. Mr. Olson: Clause 5(d), which is that portion of the act that authorizes us to make regulations.

The Chairman: What is the view of the committee on that?

Senator Thorvaldson: I would be satisfied with that.

Senator Walker: Agreed.

The Chairman: It means amendment clause 5, which deals with regulations, by adding to subclause...

Hon. Mr. Olson: No, by substituting.

The Chairman: At least, by substituting for the present clause 5(d) the following:

respecting the registration of control products and of establishments in which any prescribed control products are manufactured, prescribing the fees therefor, and respecting the procedures to be followed for the review of cases involving the cancellation or suspension of the registration of any such product or establishment.

The review is for cases involving the cancellation or suspension; it does not expand it to include refusal to register.

Hon. Mr. Olson: That is right, we agree; but the explanation the Deputy Minister gave was that there is almost automatically a negotiating and reviewing of or accepting for registration of the product in the first place, by minor changes, sometimes in the formula but perhaps mostly changes in the claims that are made and allowed on the label.

The Chairman: If the words were added, "for the review of cases involving 'refusal to register'" and then carried on as you have it here, would that be acceptable?

Senator Leonard: It would still all be within your own regulations that you have made.

Hon. Mr. Olson: It raises the original problem, and that is concerning this matter of reviewing it, and the mechanics of setting up a competent technical review body and the personnel involved. We believe that we work very closely with, and I would like to say that we like to be as co-operative as we can with the technicians we have in the original application for registration.

Senator Thorvaldson: Is there any reason, however, that you could not have the same personnel on the Board of Review as the

original personnel who refused the application? It would still be a benefit because the people who were refused have a second chance of perhaps producing new material to the same people. I would not insist on different personnel in such a Board of Review. It would merely give the applicant another opportunity to perhaps state his case in a different way or to present other facts.

Hon. Mr. Olson: I think we are in agreement. Our problem is that you have to spell it out in the law. We do it now, not in one formal review but by stages of negotiation and discussion with them to make minor changes.

The Chairman: So, if we added the words "refusal to register" to what you have in this draft of clause 5(d), I take it that, while you explain, you would not protest too much?

Hon. Mr. Olson: No, I would not think so.

The Chairman: Then may we take it that what we are considering is whether clause 5(d) shall be amended by striking out the existing clause 5(d) and putting in its place the following:

respecting the registration of control products and of establishments in which any prescribed control products are manufactured, prescribing the fees therefor,

and then this is new:

and respecting the procedures to be followed for the review of cases involving refusal to register, the cancellation or suspension of the registration of any such product or establishment.

Senator Leonard: I understand the minister is not accepting those words.

The Chairman: I asked the Minister if he was protesting, and I gathered from his attitude that he is not protesting.

Hon. Mr. Olson: We will accept that.

The Chairman: Is the committee ready for the question? Those in favour of this amendment, please indicate. Contrary?

Carried.

The Chairman: Senator Croll, having taken that vote, I figured you had withdrawn your motion?

Senator Croll: You figured right.

The Chairman: Therefore, the report this committee will make is to recommend to the Senate that it insist on its amendment, but that the amendment be couched in the following terms—and those are the terms of the

resolution which has just been approved. Is that satisfactory?

Hon. Senators: Agreed.

Whereupon the committee proceed to the next order of business.



First Session—Twenty-eighth Parliament

1968-69

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE

ON

BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 38

THURSDAY, MAY 1st, 1969

Complete Proceedings on Bill C-112,

intituled:

“An Act to amend the Farm Machinery Syndicates Credit Act.”

WITNESSES:

Farm Credit Corporation: George Owen, Chairman. W. H. Ozard,
Vice-Chairman.

REPORT OF THE COMMITTEE

The Queen's Printer, Ottawa, 1969

THE STANDING COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Lang
Aseltine	Desruisseaux	Leonard
Beaubien	Gélinas	Macnaughton
Benidickson	Giguère	Molson
Blois	Haig	Phillips (<i>Rigaud</i>)
Burchill	Hayden	Savoie
Carter	Hollett	Thorvaldson
Choquette	Isnor	Walker
Connolly (<i>Ottawa West</i>)	Kinley	Welch
Cook		White
		Willis—(30)

Ex officio members: Flynn and Martin

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, April 24th, 1969:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator McDonald, seconded by the Honourable Senator Roebuck, for the second reading of the Bill C-112, intituled: "An Act to amend the Farm Machinery Syndicates Credit Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator McDonald moved, seconded by the Honourable Senator Roebuck, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

THURSDAY, May 1, 1969.

(41)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to consider:

Bill C-112, "An Act to amend the Farm Machinery Syndicates Credit Act".

It was *Agreed* to print 800 copies in English and 300 copies in French of the proceedings of the Committee on Bill C-112.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien, Blois, Carter, Haig, Hollett, Isnor, Kinley, Leonard, Molson, Thorvaldson, Walker, Welch, White and Willis.—(16)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The following witness was heard:

The Farm Credit Corporation:

George Owen, Chairman.

Upon motion it was *Resolved* to report the said Bill without amendment.

At 10.10 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

THURSDAY, May 1, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill C-112, intituled: "An Act to amend the Farm Machinery Syndicates Credit Act", has in obedience to the order of reference of April 24th, 1969, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

Salter A. Hayden,
Chairman.

THE SENATE
THE STANDING SENATE COMMITTEE ON BANKING,
TRADE AND COMMERCE
EVIDENCE

Ottawa, Thursday, May 1, 1969

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-112, to amend the Farm Machinery Syndicates Credit Act, met this day at 9.30 a.m. to give consideration to the bill.

Senator Salter A. Hayden (Chairman) in the Chair.

The Chairman: Gentlemen, we have a quorum and I am calling the meeting to order. We have Bill C-112 before us this morning. May I have the usual motion for printing?

Upon motion, it was resolved that a verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 copies in French be printed.

The Chairman: We have three representatives from the Farm Credit Corporation, Mr. George Owen, Chairman, Mr. W. H. Ozard, Vice-Chairman and Mr. R. McIntosh, Comptroller. Would you come forward, please.

Mr. Owen, I take it you are going to make the presentation at the first instance.

Mr. George Owen, Chairman, Farm Credit Corporation: Yes. Honourable senators, as you recall, the Farm Machinery Syndicates program was first enacted in the fall of 1964. It was a plan designed to make it possible and relatively simple for farmers to group together and share in the use of expensive machinery which each one of them probably could not afford to own or use on his own behalf. The machinery could actually do the work for several farmers during the course of the year. Now, after operating under this program for some time, certain changes seem to be desirable and these are what are incorporated in this bill.

The first situation that became apparent was that very often this machinery had to be installed in specially designed buildings. I am thinking here in terms of the equipment used for grading and drying some types of products, and that sort of thing. It seems sensible that they should be able to finance the building and the machinery together. An extension of that would be certain types of buildings not requiring equipment and for which it seems quite reasonable for three or four farmers to own jointly. Here we would take such things as storage for fruit and vegetables to make an efficient controlled atmosphere for apples. It has to be significantly large, and larger than the individual farmer might be able to afford or need. The facility to build this jointly among a group of farmers seemed desirable.

The next situation was that the act itself provided for farmers to join together in what was called syndicates under the provisions of written agreements. Some groups of farmers wished to go further and actually formally incorporate farm co-operative associations and, as such be specific legal entities. The bill also provides that farmers who wish to do this could still borrow as syndicates without the need of entering into separate and distinct agreements for the purpose of this act.

Senator Aseltine: They would not be syndicates? They would be incorporated under the Companies Act?

Mr. Owen: That is right. They would be companies or co-operative associations.

Senator Aseltine: Either one.

Senator Kinley: Is there a joint responsibility when this is not co-operative?

Mr. Owen: Are you referring to a corporation?

Senator Kinley: If two or three people go together and sign the note personally.

Mr. Owen: If three or more go together and the company signs the note as such it would depend upon the security position of that company as to whether or not we might ask for personal endorsement of individual shareholders. If it was making a loan, this is a matter of security judgment and lending judgment.

Senator Aseltine: Each individual endorses the debt.

Mr. Owen: Each individual endorses the debt under the legislation at the present time. We have not been able to lend to companies as such. Under this proposed bill we would be able to lend to farming corporations and, as such, the farming corporation, the incorporating body, would be borrowing and signing the note.

Senator Carter: Could a corporation include a father and his two sons?

Mr. Owen: Yes, sir. The other item that this bill would include would be provision that we might lend to Indians farming on reserves and to Indian bands. Our problem in this respect up to date has been that we have not been able to obtain from Indians farming on reserves any form of security, as we would from any other borrower. This bill will authorize the corporation to enter into an agreement with the Minister of Indian Affairs whereby the minister will provide this alternative guarantee which we cannot otherwise obtain. That will then make it possible for us to lend under this legislation to Indians who are farming on reserves.

I think that covers the broad contents of the bill.

Senator Aseltine: Before you leave the Indian part of your argument, can you give us an indication about the reserves in the different provinces. For example, in Saskatchewan we have some large reserves. I presume that this bill is intended to allow the Indians living in the reserves to carry on farming operations as a syndicate under this bill, is that right?

Mr. Owen: That is right.

Senator Aseltine: Must they reside within the reserves?

Mr. Owen: We can lend to any farmer anywhere, and these farmers, if they are farming

off the reserve, are fine. To get a guarantee from the Minister of Indian Affairs with respect to a loan on the reserve, they must be reserve Indians. I would not want to try to interpret the Indian Act itself, but it would have to be an Indian who is considered to be a reserve Indian.

Senator Aseltine: He might be a reserve Indian and actually not reside within the reserve, then?

Mr. Owen: If that is possible, that is so.

Senator Aseltine: Just as a farmer may be farming in the country and living in the city, or a city person may live in the country.

Mr. Owen: The point is that when he is farming on the reserve as a reserve Indian we could not make any claim in any way on the assets, in the event of default. This is the purpose of the agreement, so that the Minister of Indian Affairs gives us security.

Senator Hollett: As a co-operative, would they escape the co-operative tax?

Mr. Owen: Indians farming on reserves?

Senator Hollett: Anybody? Farm syndicate means a cooperative farm association?

Mr. Owen: A cooperative farm association. They have the same tax liabilities. We are not doing anything here with respect to the establishment or non-establishment of farming cooperative societies. All we are doing is making it possible to lend to them. This does not in any way change tax status from whatever it might be up to the present time. Not being a tax lawyer, I am not going to try to interpret that.

Senator Kinley: Has this been a success, this cooperative machinery scheme? Everyone uses machinery and no one ever looks after it properly. I find that when I lend out machinery it always comes back with something wrong with it.

Mr. Owen: From that point of view, it always has been a success.

The Chairman: You mean, when it comes back with something wrong with it?

Senator Kinley: It is like lending your car.

Mr. Owen: Whether it is a success or not, I would expect to see a greater volume of business done, under this legislation.

The Chairman: What is the volume at present? How much?

Mr. Owen: Until the end of March of this year, in four and a half years, it was \$4.6 million.

Senator Molson: A million dollars a year.

Mr. Owen: I must say, however, that in the last year it was significantly bigger than in previous years. In the year just ended in March, we lent \$1,670,000.

Senator Molson: Can you break down the figures?

Mr. Owen: I can give you the provincial figures for the last fiscal year. They were British Columbia \$63,000; Alberta, \$557,000; Saskatchewan, \$179,000; Manitoba, \$272,000; Ontario, \$299,000; Quebec, \$258,000; Atlantic Provinces, \$44,000.

Senator Leonard: You have all the Atlantic Provinces together?

Senator Kinley: What was the last figure, the one for Atlantic Provinces, how much?

Mr. Owen: It was \$44,000.

Senator Kinley: That is Newfoundland, Nova Scotia, Prince Edward Island and New Brunswick.

Senator Isnor: Why do not you break these down?

Mr. Owen: I do have a breakdown in some other records. For our administrative purposes we administer the four Atlantic Provinces from one office in Moncton and this is the reason why the figures are set up in that fashion. I am afraid I have not got a breakdown on that with me for the last year.

Senator Leonard: There would be only one or two loans, would there not?

Mr. Owen: I feel quite certain that the loans made to the Atlantic Provinces constitute about four loans—I think two in Prince Edward Island and two in Nova Scotia.

Senator Kinley: Do you think this bill is an improvement? You are building a place to keep machinery. That is an improvement. And if you had someone to look after it, when it is lent, that would be better still, as no one looks after it. That is the trouble now.

Mr. Owen: I think that that matter is covered under this program, in that we insist on an agreement. Each syndicate when set up must nominate somebody to maintain that machinery. They must have a written agree-

ment as to how it is going to be maintained and how they are going to share in the cost of maintaining it. There are even agreements providing that the machinery can be inspected at various intervals, at the request of the corporation or of the farmers within the group. I think the factor with respect to legislation which has removed some of the problems of joint use of machinery is the fact that we insist in advance that the men get together and agree among themselves and put it down in writing as to where the responsibilities and rights of each member lie.

Senator Molson: It would have to be stored under cover?

Mr. Owen: This agreement specifically would have to state who is responsible for storing it and where. In most instances I am sure the individual farmers, for their own protection, would require it to be stored under cover. There may be exceptions to that.

Senator Kinley: Everyone wants to use machinery at the same time, that is one difficulty.

Mr. Owen: They again have clauses within their agreements as to how they resolve that kind of dispute.

Senator Kinley: I gather they have a meeting for rotation?

The Chairman: It is written into the agreement as to how they would resolve the question of allocations.

Senator Leonard: What has been the repayment record, in general terms?

Mr. Owen: Quite good. I do not believe we have yet finally recorded any losses under the program. I know we have certain syndicates that are in trouble, and we may eventually lose.

Senator Hollett: When you say "we," what do you mean?

Mr. Owen: I am referring to the Farm Credit Corporation.

Senator Hollett: Thank you.

Mr. Owen: We have a number in trouble but, generally speaking, the repayment record is quite good.

Senator Leonard: Under the new bill you can take the security back. Does that mean that if there is a land mortgage, the land can be taken?

Mr. Owen: If we were lending for a building, then we could, and we probably would, in many cases, take a land security. If it were a piece of land with a building on it, and we had four or five farmers, relatively good credit risks, and they were jointly and severally responsible for the repayment of the loan, we might not go through the process of taking a mortgage.

Senator Leonard: Has the maximum loan, before this bill, been \$100,000?

Mr. Owen: Yes, it has.

Senator Leonard: There is no change in that?

The Chairman: Do you take a chattel mortgage on the machinery in many cases?

Mr. Owen: We do. I would not think we do it in more than 20 or 25 per cent of the cases. Again, if we have the signatures of a number of farmers, we do not take a chattel mortgage unless we feel it is reasonable to do so.

Senator Aseltine: I would not want to sign a mortgage agreeing to charge my land under one of those syndicate agreements. Have you had any occasions where you have taken mortgages?

Mr. Owen: So far the only kind of mortgages we have taken are chattel mortgages.

Senator Aseltine: No land mortgages?

Mr. Owen: That is right, because up to now we have only been lending money to buy machinery. When we start to lend for the construction of buildings, that will be different. Under those cases, I think it would be only the building site, where the building was located, rather than the entire farm.

Senator Carter: Does the make of machinery have to be approved or can the farmers import machinery under this legislation?

Mr. Owen: We merely need to be satisfied that the machinery they are buying is fit and adequate for the purposes that they are going to use the machinery for.

Senator Carter: I have heard that a group of farmers have started to import farm machinery from Ireland. Apparently it is 50 per cent cheaper there than in Canada. Would that be prohibited under this legislation or do you have any regulations governing it?

Mr. Owen: We have no regulations to prohibit lending of money merely because machi-

nery originates in a country other than Canada.

Senator Carter: You gave some figures for the prairie provinces. It seems to me that Saskatchewan was lower than Alberta or Manitoba. I would have expected Saskatchewan to be higher. What is the reason for that?

Mr. Owen: It is rather difficult to pinpoint the reason why farmers in one area come to us more than others. I suppose part of it is that in Alberta we have had a certain amount of activity with respect to the purchase of machinery for clearing and breaking of land, where it is fairly heavy and expensive, whereas there is not so much of that type of development in Saskatchewan. I suspect, too, that there are more farms in Alberta where there is sort of a combination enterprise, grain and livestock, as distinct from purely grain. Many of the strictly grain farmers have been reluctant to give up their independent ownership of their combines, for example, in order to join a syndicate and save. There was quite a change this year with respect to grain dryers, however.

Senator Willis: They were in demand?

Mr. Owen: Farmers were quite anxious to get in and join with the purchase of grain dryers, because the timeliness is not quite as significant as for combines. They do not need a grain dryer every year, and each farmer did not want, individually, to buy such machines.

Senator Carter: You spoke a little while ago about the type of agreement you have to make to get a loan, and that it is written into the agreement who is going to house the machine, look after it and so on. Do you have that kind of agreement with the Indians?

Mr. Owen: If they purchase under this legislation, the group of farmers who are going to use this machinery will be required to get together and come to an agreement as to how they are going to store it, use it and maintain it, yes. This is a prerequisite in order for them to obtain credit. We must be satisfied that they have worked out these arrangements. We do not impose the arrangements on them, but we do make sure they have this kind of arrangement.

In other words, they can choose, themselves, the kind of arrangements so long as we are satisfied they will work.

Senator Carter: Where does the Minister come in on this?

Mr. Owen: The Minister of Indian Affairs?

Senator Carter: Yes.

Mr. Owen: Once this legislation has been approved, we would be negotiating with the Department of Indian Affairs and entering into an agreement outlining the circumstances under which we would guarantee that, if we cannot recover our loan from the syndicate on the reserve, then we could call upon the Minister of Indian Affairs to pay that loan for the Indians.

Senator Leonard: Under the bill it does not have to be new machinery, does it?

Mr. Owen: No, it does not.

Senator Leonard: In practice do you require it to be new machinery?

Mr. Owen: No. This program, to a certain extent, was formulated along the lines of one operating in Britain, where they require new machinery, but we have not required new machinery. However, we do ask that our local representatives ensure that the machinery is in good working order, and if part of its lifetime is gone we would expect the cost of the machine to be repaid somewhat earlier. But there is no prohibition against used equipment.

The Chairman: Do you have any inspectors to see whether the machinery is being properly cared for?

Mr. Owen: We do have the inspectors in the areas who would see the machinery before it is purchased and who, if we were in difficulty with a syndicate, would go round to see how the security was being maintained. On the other hand, if some of the individual members of the syndicate were dissatisfied with the maintenance of the equipment and brought that to our attention, we would then go have a look at it, but we do not make a regular course of going round once or twice a year to inspect all the equipment.

Senator Molson: I notice that the term was extended for 15 years for machinery that is to be installed in buildings. That is a fairly long time for some machinery, is it not?

Mr. Owen: That is right, senator. For those machines where the term should not be that long, we will not make it that long.

Senator Molson: It would depend upon the type of machinery, in other words.

Mr. Owen: That is right. It may be some kind of equipment that is strictly part of the building. If that is the case, then the term would be 15 years. But for the rest the term would be shorter.

Senator Carter: In giving approval to the type of machinery and the make or brand that is being purchased, do you take into account the opportunities for servicing the machinery?

Mr. Owen: I would have to say that we really have not got deeply involved in that aspect. We advise the farmers of the importance of this type of thing, but we do leave that decision to them, so long as we are satisfied that the equipment will do the work. I think, if you get three, four or five farmers together to buy machinery, the farmers themselves are going to be pretty careful about finding what kind of replacement service and parts service they will be able to get. We would rather leave that to them. We are really lenders and do not want to take their decisions away from them.

Senator Carter: What prompted that question was that I had heard about these farmers importing machinery from Ireland, and I wondered who would service the machinery and how they would get parts for them and so on.

Mr. Owen: They are doing that, I understand, through a farmers' organization. I am just speaking as a casual observer, you will understand, because I am not involved with it. I believe that the kind of machinery they are buying is the same kind that is available here.

Senator Willis: Farm machinery is usually serviced by the people from whom it is bought.

Mr. Owen: They would have trouble getting it serviced by the people in Ireland.

Senator Willis: It is the man from whom you buy the machinery who services it, the same as for a car.

Senator Kinley: I see it reported in the press that Canadian manufacturers are selling farm machinery cheaper abroad than in Canada. Is there anything wrong in that? Do you think it is a wrong thing to do?

Mr. Owen: I do not want to get involved in that question. My function is to lend money to people to buy machinery.

Senator Kinley: I think it is a good thing to sell your surplus abroad. It doesn't hurt Canada.

The Chairman: Any other questions?

Are you ready to report the bill? Shall I report the bill without amendment?

Honourable Senators: Carried.

The committee adjourned.

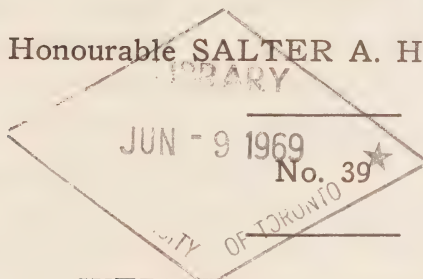


First Session—Twenty-eighth Parliament

1968-69

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE
ON
BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*



WEDNESDAY, MAY 7th, 1969

Second and Final Proceedings on Bill S-34,

intituled:

"An Act respecting Nova Scotia Savings & Loan Company".

APPENDIX:

"C"—Letter from Company to shareholders, dated February 11th, 1969.

REPORT OF THE COMMITTEE

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Leonard
Aseltine	Desruisseaux	Macnaughton
Beaubien	Gélinas	Molson
Benidickson	Giguère	Phillips (<i>Rigaud</i>)
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Isnor	Welch
Connolly (<i>Ottawa West</i>)	Kinley	White
Cook	Lang	Willis—(30)

Ex officio members: Flynn and Martin

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, April 29th, 1969:

"The Honourable Senator Urquhart presented to the Senate a Bill S-34, intituled: "An Act respecting Nova Scotia Savings & Loan Company".

The Bill was read the first time.

With leave of the Senate,

The Honourable Senator Urquhart moved, seconded by the Honourable Senator Rattenbury, that the Bill be read the second time now.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative, on division.

The Bill was then read the second time, on division.

The Honourable Senator Urquhart moved, seconded by the Honourable Senator Rattenbury, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.

With leave of the Senate,

The Honourable Senator Urquhart moved, seconded by the Honourable Senator Rattenbury:

That Rule 119 be suspended with respect to the Bill S-34, intituled: "An Act respecting Nova Scotia Savings & Loan Company".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, May 7th, 1969.
(42)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to *resume* consideration of:

Bill S-34, "An Act respecting Nova Scotia Savings & Loan Company".

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien, Benidickson, Blois, Carter, Cook, Croll, Desruisseaux, Gélinas, Hollett, Isnor, Kinley, Leonard, Macnaughton, Molson, Phillips (*Rigaud*), Walker, Welch, White and Willis. (21)

Present, but not of the Committee: The Honourable Senators Fergusson, Macdonald (*Cape Breton*), Methot, Prowse and Urquhart. (5)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

After discussion and upon motion it was *Resolved* to report the said Bill without amendment.

A letter from the Company to the shareholders will be printed as Appendix "C".

At 9.40 a.m. the Committee proceeded to the next order of business.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, May 7th, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill S-34, intituled: "An Act respecting Nova Scotia Savings & Loan Company", has in obedience to the order of reference of April 29th, 1969, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

**THE STANDING SENATE COMMITTEE ON BANKING,
TRADE AND COMMERCE
EVIDENCE**

Ottawa, Wednesday, May 7, 1969.

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-34, respecting Nova Scotia Saving & Loan Company, met this day at 9.30 a.m. to give further consideration to the bill.

Senator Salter A. Hayden (Chairman) in the Chair.

The Chairman: Honourable senators, the first bill we are going to look at this morning is Bill S-34, which carries over from the last time we sat. If you will recall, we heard the witnesses and then adjourned so that a principle of the bill, which seemed to us to be a new principle in legislation, could be given further though by the members of the committee. That was the question of putting some percentage restrictions on the number of issued shares of the company that could appear in the name of one person. At that time Senator Leonard expressed some concern about that, but in the meantime certain bills received first reading in the Senate last night, one of which is the trust companies bill, and having looked at those bills I note that they contain a provision for doing the sort of thing contemplated by Bill S-34. Therefore, if Parliament approves those bills that were passed in the Senate last night, there will be precedent for Bill S-34.

Do you have anything to add, Senator Urquhart?

Senator Urquhart: I have nothing further.

Senator Walker: Along the line of your argument, Mr. Chairman, the Royal Trust Company itself has in one of its prospectives the following clause:

When more than ten percent of the outstanding shares are associated with

each other (as hereinafter defined) none of such associated shares in excess of ten per cent may be voted at any meeting of shareholders of Royal Trust.

The Chairman: Along that line, I was indicating in the bill relating to trust companies which was introduced last night in the Senate that there is provision for the directors and shareholders providing for restrictions on the number of shares and the voting of shares under which the authority to do exactly what is proposed in this bill could be done.

Senator Molson: We have not passed those yet, Mr. Chairman.

The Chairman: I think it might be a fair assumption that they will be passed.

Senator Molson: I would think so.

Senator Croll: It is not an unreasonable precedent under these circumstances.

The Chairman: Of course not. Is there any further discussion?

Senator Leonard: In my opinion the principle in Bill S-34 is different from the principle contained in the bills that were passed last night. Inferentially, it does allow one to own more than ten per cent of the shares, in my opinion. I have not changed my personal views. However, I am prepared to accept the view of the majority of the committee with respect to the bill.

Senator Isnor: I move that we report the bill without amendment.

Hon. Senators: Agreed.

The committee then proceeded to the next order of business.

APPENDIX "C"

NOVA SCOTIA SAVINGS &
LOAN COMPANY

Halifax, Nova Scotia

FEBRUARY 11, 1969.

To the Shareholders.

In recent weeks a large Canadian Company having its Head Office in the Province of Quebec, has purchased through brokers a substantial number of shares in Nova Scotia Savings & Loan Company. It is possible that such Company may acquire further shares and your Directors consider it proper to write to the shareholders to advise them of this situation and also express the Directors' views concerning our Company's growth and future and their desire that this Company remain independent. They consider that it is in the best interests of the shareholders, the borrowers and the public that any attempt to take over the Nova Scotia Savings & Loan Company or have it become a subsidiary of a larger Corporation, be resisted. The Directors intend to oppose any steps that may be taken by any company to acquire control. They believe that the shareholders in the main will support this position.

It is to be recalled that the Company was organized in the year 1850 and has successfully carried on business through this period of time. In the past five years the equity of the shareholders has increased by 40% and the net profit of the Company by 99%. The year 1968 was an exceptionally good one and resulted in an increase of 19% in operating profit over the previous year. Net earnings per share improved by 15.5% or 51 cents to 59 cents in the past year. Recently

the Directors announced an increase in dividends from 30 cents per share in 1968 to 34 cents per share in 1969. During the past five years dividends have increased by 68%.

In 1968 the Company approved 1,210 mortgage applications for a total of \$22,000,000 providing for 2,220 housing units. Loans are made both in rural and urban communities and the Company performs a service which it is believed cannot be equalled. It is thought that the Company's lending policies are unique and to the advantage of the Maritime Provinces and to the shareholders.

The Directors firmly believe that the prospects of future growth are excellent. While no absolute forecast can be made of the extent of improvement in the Company's position, nevertheless, it is confidently thought that the Company will enjoy a good future and be in a position to serve its borrowers in the Maritime Provinces, and its shareholders in full measure.

Recently the shares have traded at the highest price in the history of the Company. While your Directors cannot say with any certainty what the value of the stock will be from time to time, nevertheless they believe that the shares should have a good increase in value and consistent with the Company's growth. It is recommended that shareholders have the future of the Company in mind before making any disposition of their shares. The Management would be very glad to furnish any additional information that may assist any shareholder with respect to the Company.

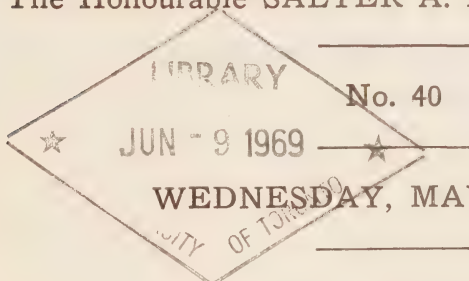
G. C. Piercey,
President.



First Session—Twenty-eighth Parliament
1968-69

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE
ON
BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*



WEDNESDAY, MAY 7th, 1969

Complete Proceedings on Bill S-32,

intituled:

"An Act respecting The Canada North-west Land Company (Limited)".

WITNESSES:

The Canada North-west Land Company (Limited): H. Graham Gammell,
President. Marcel Joyal, Q.C., Counsel.

REPORT OF THE COMMITTEE

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Leonard
Aseltine	Desruisseaux	Macnaughton
Beaubien	Gélinas	Molson
Benidickson	Giguère	Phillips (<i>Rigaud</i>)
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Isnor	Welch
Connolly (<i>Ottawa West</i>)	Kinley	White
Cook	Lang	Willis—(30)

Ex officio members: Flynn and Martin

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, April 29th, 1969:

"Pursuant to the Order of the Day, the Honourable Senator Beaubien moved, seconded by the Honourable Senator Macdonald (*Cape Breton*), that the Bill S-32, intituled: "An Act respecting The Canada North-West Land Company (Limited)", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Beaubien moved, seconded by the Honourable Senator Macdonald (*Cape Breton*), that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, May 7th, 1969.
(43)

At 9.40 a.m. the Standing Senate Committee on Banking, Trade and Commerce proceeded to the consideration of:

Bill S-32, "An Act respecting The Canada North-west Land Company (Limited)".

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien, Benidickson, Blois, Carter, Cook, Croll, Desruisseaux, Gelinas, Hollett, Isnor, Kinley, Leonard, Macnaughton, Molson, Phillips (*Rigaud*), Walker, Welch, White and Willis. (21)

Present, but not of the Committee: The Honourable Senators Fergusson, Macdonald (*Cape Breton*), Methot, Prowse and Urquhart. (5)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

It was *Agreed* that 800 copies in English and 300 copies in French of these proceedings be printed.

The following witnesses were heard:

The Canada North-west Land Company (Limited):

H. Graham Gammell, President.

Marcel Joyal, Q.C., Counsel.

Upon motion it was *Resolved* to report the said Bill without amendment.

At 9.55 a.m. the Committee adjourned until later this morning.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, May 7th, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill S-32, intituled: "An Act respecting The Canada North-west Land Company (Limited)", has in obedience to the order of reference of April 29th, 1969, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

**THE STANDING SENATE COMMITTEE ON BANKING,
TRADE AND COMMERCE
EVIDENCE**

Ottawa, Wednesday, May 7, 1969

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-32, respecting The Canada North-west Land Company (Limited), met this day at 9:40 a.m. to give consideration to the bill.

Senator Salter A. Hayden (Chairman) in the Chair.

The Chairman: Senator Beaubien was the sponsor of Bill S-32. May I have a motion for printing, duly moved and seconded?

Upon motion, it was *resolved* that a verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 copies in French be printed.

The Chairman: Have you anything to add at this time, Senator Beaubien?

Senator Beaubien: I do not think so, Mr. Chairman. I think we covered it all in the Senate.

The Chairman: Would you like to present the people appearing in support of the bill?

Senator Beaubien: Certainly. This is Mr. H. Graham Gammell, President and Chief Executive Officer of the company; to his right is the Right Hon. Lord Shaughnessy, Vice-President and Secretary, and on Mr. Gammell's left is Mr. L. M. Joyal, legal counsel.

The Chairman: Would you care to make an opening statement, Mr. Gammell?

Mr. H. Graham Gammell, President and Chief Executive Officer, The Canada North-west Land Company (Limited): Mr. Chairman, honourable senators, in this bill we are requesting that our company, which is a special act company, be brought under the provisions of the Companies Act rather than Parliament. This is primarily to make it easier for us to expand the company and

to proceed in the normal corporate manner without returning to Parliament to take up the time of Parliament. We are an expanding exploration oil company and there will be times when we need to change our corporate structure in the future, we expect. This is the aim of the bill which is being presented.

The Chairman: Are there any questions?

Senator Molson: What are the corporate purposes of the company?

Mr. Gammell: Oil and natural resources exploration and development.

Senator Benidickson: When was it incorporated?

Mr. Gammell: It was incorporated in the United Kingdom in 1883 and in Canada in 1893.

The Chairman: And it is a special act company in Canada?

Mr. Gammell: Yes, it is a special act company.

Senator Leonard: Has the company any land left?

Mr. Gammell: It has few very small parcels of surface rights, but it is primarily minerals in fee simple in Saskatchewan, Manitoba and Alberta.

The Chairman: Are there any other questions of Mr. Gammell?

Senator Walker: This is merely bringing it up to date under the Canada Corporations Act?

Mr. Gammell: Yes.

The Chairman: I think we should hear from Mr. Joyal, who will explain the procedures that are involved in this bill to accomplish the result that is desired. Would you take the floor, Mr. Joyal?

Mr. Marcel Joyal, Q.C.: Thank you, Mr. Chairman. Briefly, this is a parallel course to what I believe Parliament has already decided could be done with special act corporations when the corporation is a no share capital corporation. Perhaps some of you will recall Bill S-51 of a couple of years ago, section 147B of the Corporations Act...

Senator Benidickson: What company was that?

Mr. Joyal: Bill S-51, which was an act to amend the Canada Corporations Act, senator. There was a procedure whereby companies which had been incorporated by special act, no share capital types of company, were allowed to continue in existence under the Canada Corporations Act.

It was felt that in this particular case, using this as a precedent, the same formula could be applied to a share capital corporation; and after discussions, I believe, with your own counsel in the Senate, Mr. Hopkins, and discussions also with the Corporations Branch, it was decided that this particular type of provision added on to the statute of the company with which we are dealing could effectively do what we wish to do.

Mr. Benidickson: My point was, is this a precedent?

Mr. Joyal: We like to think so, senator.

The Chairman: Yes, there is no question about it, and I think we will ask our Law Clerk some questions in a moment.

I believe that again, Senator Leonard, there are some provisions in the four bills introduced last night—the Trust Companies Act, the Loan Companies Act, the Canadian and British Insurance Companies Act, and the Foreign Insurance Companies Act—which will be explained on Thursday, permitting a

special act company to proceed to change and vary as though it were a Letters Patent company, without going back to the province. So, while this may have seemed a little daring in breaking new ground and being a precedent at the time the bill was prepared, it now has a lot of company which, I expect, in due course will pass into law.

Have you any comments, Mr. Hopkins?

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: No, Mr. Chairman, except I think this company would be better housed under the Canada Corporations Act. We have no powers or regulations to act in this way, and it would be an improvement. It is not without precedent, because this has happened to non-share companies.

The Chairman: This company is just applying the principles which were approved in relation to the non-share companies, and a principle which is recognized in bills now standing before the Senate.

Mr. Hopkins: Yes. It is not the kind of company we would incorporate now, in any event. It would now be done under the Canada Corporations Act.

Senator Benidickson: What was that?

Mr. Hopkins: I was saying that if it were to come before us now, it would more appropriately go to the Canada Corporations Branch in the first place.

Senator Beaubien: I move we report the bill without amendment.

The Chairman: Are you ready for the question? Shall we report the bill without amendment?

Hon. Senators: Agreed.

Following a short recess the committee proceeded to the next order of business.



First Session—Twenty-eighth Parliament

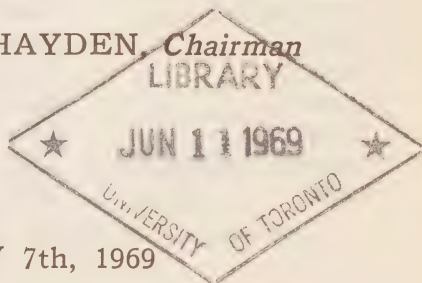
1968-69

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE
ON
BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 41

WEDNESDAY, MAY 7th, 1969



Third and Final Proceedings on Bill C-165,

intituled:

“An Act to amend the Income Tax Act and the Estate Tax Act”.

WITNESSES:

Department of Finance: The Honourable E. J. Benson, Minister. J. R. Brown, Senior Tax Adviser, Taxation Branch. E. H. Smith, Tax Policy Division.

Department of National Revenue: W. I. Linton, Chief, Income Tax Division.

REPORT OF THE COMMITTEE

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Leonard
Aseltine	Desruisseaux	Macnaughton
Beaubien	Gélinas	Molson
Benidickson	Giguère	Phillips (<i>Rigaud</i>)
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Isnor	Welch
Connolly (<i>Ottawa West</i>)	Kinley	White
Cook	Lang	Willis—(30)

Ex Officio members: Flynn and Martin

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, April 22nd, 1969:

“With leave of the Senate,

The Honourable Senator Connolly, P.C., resumed the debate on the motion of the Honourable Senator Hayden, seconded by the Honourable Senator Langlois, for the second reading of the Bill C-165, intituled: “An Act to amend the Income Tax Act and the Estate Tax Act”.

After debate, and—

The question being put on the motion,

The Senate divided and the names being called they were taken down as follows:—

CONTENTS

The Honourable Senators

Aird,	Davey,	Inman,	McElman,
Argue,	Desruisseaux,	Isnor,	Petten,
Boucher,	Eudes,	Kickham,	Phillips
Bourget,	Fergusson,	Kinley,	(<i>Rigaud</i>),
Bourque,	Fournier	Kinnear,	Rattenbury,
Burchill,	(<i>de Lanaudière</i>),	Laird,	Robichaud,
Carter,	Giguère,	Lefrançois,	Roebuck,
Connolly	Gouin,	Leonard,	Smith,
(<i>Ottawa West</i>),	Hastings,	Martin,	Urquhart—36.
Croll,	Hayden,	McDonald,	

NON-CONTENTS

The Honourable Senators

Beaubien,	Fournier	Macdonald	Quart,
Bélisle,	(<i>Madawaska-</i>	(<i>Cape Breton</i>),	Thorvaldson,
Blois,	<i>Restigouche</i>),	MacDonald	Walker,
Choquette,	Gladstone,	(<i>Queens</i>),	Welch,
Flynn,	Haig,	Méthot,	White,
	Irvine,	Pearson,	Willis,
		Phillips	Yuzyk—21.
		(<i>Prince</i>),	

So it was resolved in the affirmative.

The Bill was then read the second time, on division.

The Honourable Senator Hayden moved, seconded by the Honourable Senator Bourget, P.C., that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative.”

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, May 7th, 1969.

(44)

At 10.30 a.m. the Standing Committee on Banking, Trade and Commerce resumed and proceeded to further consideration of:

Bill C-165, "An Act to amend the Income Tax Act and the Estate Tax Act".

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien, Benidickson, Blois, Carter, Cook, Croll, Desruisseaux, Gelin, Hollett, Isnor, Kinley, Leonard, Macnaughton, Molson, Phillips (*Rigaud*), Walker, Welch, White and Willis. (21)

Present, but not of the Committee: The Honourable Senators Fergusson, Macdonald (*Cape Breton*), Methot, Prowse and Urquhart. (5)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

After discussion and upon motion, Mr. Stephen C. Smith was retained as Counsel to the Committee with the undertaking that only his actual travel expenses be paid and that no fee would be charged.

The following witnesses were heard:

Department of Finance:

J. R. Brown, Senior Tax Adviser, Taxation Branch.

E. H. Smith, Tax Policy Division.

Department of National Revenue:

W. I. Linton, Chief, Income Tax Division.

At 12.30 p.m. the Committee adjourned until 3.00 p.m. this day.

At 3.00 p.m. the Committee resumed.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien, Blois, Connolly (*Ottawa West*), Cook, Croll, Flynn, Gelin, Giguere, Isnor, Kinley, Leonard, Macnaughton, Martin, Molson, Phillips (*Rigaud*), Walker, Welch, White and Willis. (21)

Present but not of the Committee: The Honourable Senators Dessureault, Fergusson, Irvine, Laird, McDonald, Methot and Roebuck. (7)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The following witness was heard:

Department of Finance:

The Honourable E. J. Benson, Minister.

After discussion and questioning the Minister and the Departmental officials left the hearing at 4.10 p.m.

The Honourable Senator Croll moved that the said Bill be reported without amendment.

The question being put, the Committee divided as follows:

YEAS—9

NAYS—7

The motion was declared *carried*.

After discussion and upon Motion it was *Resolved* that 4000 English and 1500 French copies of these proceedings be printed.

At 4.30 p.m. the Committee proceeded to the next order of business.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, May 7th, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill C-165, intituled: "An Act to amend the Income Tax Act and the Estate Tax Act", has in obedience to the order of reference of April 22nd, 1969, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

EVIDENCE

Ottawa, Wednesday, May 7, 1969.

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-165, to amend the Income Tax Act and the Estate Tax Act, met this day at 9.45 a.m. to give further consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, as you know, we have already had several hearings on this bill. The departmental representatives are to be here momentarily, so that we may discuss with them the points which were made in the submissions by the Trust Association and the Ontario Section of the Canadian Bar Association, in particular.

While we are waiting for the witnesses to arrive, I may say there is a bit of information I should convey to you, because I want a resolution from this committee. You will recall that in the Senate a week ago there was a resolution proposed by the Government Leader, giving authority to this committee to expend moneys for counsel and for accounting services and all such related matters.

In talking to a number of senators, we felt, after we heard the lawyers representing the Ontario Section of the Canadian Bar Association last week, that we should have counsel to assist and to be there to consult with, and then the problem came up of selecting counsel in the circumstances.

Finally, I made a selection, subject to your approval, and I selected a person whom I am accustomed to working with in my office. He is sitting right beside me now. There will be no charge in the way of fees for his services—

Hon. Senators: Hear, hear.

The Chairman: —because if there were going to be any such charges I could not and would not employ him. However, I wanted to have him, so that the only thing that will be paid in connection with his services will be

his actual out-of-pocket expenses, not even a per diem allowance.

In those circumstances, I felt I could ask the committee reasonably to let me have a man I am accustomed to working with. I can assure you that he is familiar with the subject, and that there will be no “shotgun” draftsmanship. If we have to come to drafting, we will take our time on it.

Therefore, if I could have a resolution approving of his selection and of the recital of the facts as I have put them to you, that the only responsibility we have for payment is his actual out-of-pocket expenses, that will be in order. This is Mr. Stephen C. Smith Counsel to the Committee, from my office in Toronto.

Senator Benidickson: Mr. Chairman, might I say I think you have acted perfectly properly, and have made an excellent selection. Of course, we need counsel under the circumstances. I think we should select counsel who will work closely with you, and I think all members of the committee will appreciate that fact and, under the circumstances, we should adopt the resolution to pay the actual expenses. Certainly these should be paid.

I commend you for what you have done. I know something of this gentleman's reputation, and I think he will be a great asset to the deliberations of the committee.

The Chairman: Then there is a resolution, therefore, in those terms, I take it?

Hon. Senators: Agreed.

The Chairman: I should tell you that I was talking to the Minister of Finance yesterday and he indicated his desire to appear before the committee. He also indicated that he would be available at 3 o'clock this afternoon, and I accepted this on your behalf as a firm date. He has to leave for Europe some time later in the day because of a death in the family, but he will be available this afternoon at 3 and I would assume he will be able

to spend an hour or two with us and we will hear his answers to the various questions raised.

I also spoke to the departmental representatives, Mr. Smith, Mr. Linton and Mr. Brown, who were here originally, and asked them if they would be here today so that we could discuss the points raised by the Ontario Section of the Canadian Bar. They have not yet arrived, but I expect that they will be here shortly. In view of the fact that the minister is coming this afternoon I think we should get their reaction to the extent they feel they are not intruding on policy to the points made as to whether they are covered in some way in the bill that we did not see and that the representatives of the Canadian Bar did not see, or whether they have any comment to make as to the difficulty in covering such a situation. At the moment, as I see it, the only reason for not including this matter is the difficulty in dealing with it, and it is up to us, perhaps, to find a way through it.

Shall we now recess for a few minutes until the witnesses arrive?

Senator Molson: Mr. Chairman, there is a meeting of the Standing Committee on Transport and Communications at 10 o'clock. It may be that some senators serve on both committees.

The Chairman: Would an hour be long enough, do you think, for the meeting of that committee?

Senator Molson: Well, there is only one bill dealing with the CPR and I would think it would be quite short.

The Chairman: Would the members of the committee prefer to recess for a half hour rather than sitting here in contemplation? That would bring us up to 10.30.

Honourable Senators: Agreed.

The Chairman: And I expect you will all be back at that time.

(Whereupon the committee recessed)

Upon resuming:

The Chairman: It now being at least 10.30 we shall resume our deliberations on Bill C-165. You will recall that we had reached the stage where we had heard the departmental representatives, and at our last sitting we heard representations from several groups. We have before us this morning the departmental representatives again. I think we

should discuss with them the points that were submitted at our last meeting by those various groups in preparation for the appearance here this afternoon of the minister. It may be that these gentlemen can have a discussion with him in the meantime so that he will be aware of what the points are with which we are particularly concerned.

In order to lead off the discussion may I raise a point that occurs to me right away. You will recall that we were told of the situation where a man dies; he has no family and he leaves the life interest to his widow, and then the residue goes to charity. The objection made by the members of the Ontario section of the Canadian Bar Association was that in those circumstances the charity exemption would not apply. If the husband made the gift there would be a right to deduct. If the wife made the gift there would be a right to deduct. But, because of the manner in which the bill is drawn that result is not achieved by it—or, it does not appear to be. I would like to invite a comment from the panel as to whether there is any reason why it was put in this form. Were the drafters aware of this problem at the time the bill was drafted? Can you offer some explanation? Mr. Brown, are you going to take it on first?

Mr. J. R. Brown, Senior Tax Adviser, Taxation Branch, Department of Finance: I guess so, senator.

May I divert for a moment to correct two things that I said here two weeks ago. They bothered me at the time. I checked up on them later, and found to my horror that I had given wrong information to the committee.

The first one had to do with a comparison between the proportion of taxes raised by death duties in the United States and in Canada. At the time I said that we raised about two per cent of our total federal-provincial-municipal revenues through death duties, and that they raised 2½ per cent. The figures should have been 2 per cent for them, and a little less than 1½ per cent for us. The margin was right; in one of the figures was right, but I got it on the wrong side.

The second thing had to do with the tax in the United States on an estate of \$500,000. You will recall that we ran through it in quite a few situations. In the case of an estate with a life interest to the widow and the remainder to the children on her death, the figure in the table from which I quoted was \$71,000 for American tax. It did not look right to me when I saw it, and it turns out that it

is not right. The Americans have a 50 per cent exclusion for property left to a wife, but they do not apply that to property left in a trust unless the terms of the trust are such that the property will be included in the wife's estate. In simple terms, if she has a right of encroachment of capital or the right to direct who the capital goes to, it is exempt when the husband dies and is taxed when the wife dies. If it is the straightforward type of trust that is quite frequent in Canada, it does not qualify for exemption at all when the husband dies. That was the type of trust that was in mind, so the American taxes, instead of being \$71,000, should have been \$172,000, which compares to a current Canadian tax of \$116,000 and a tax under the new system which will vary between \$170,000 and \$185,000. I hasten to point out that nobody in the United States uses that kind of will for that very reason. At least, I should say that it is not an estate planner's trust in the United States.

The Chairman: In any event, this information was not very relevant nor useful.

Mr. Brown: Thank you, senator!

I now turn to the point you raised of the gift for charity. First, there is no doubt that the lack of change in the provisions in the Estate Tax Act has the effect that the Canadian Bar Association suggested it does have. If the particular charity to which the funds are to go is specified in the husband's will, there will not be an exemption when the wife dies, because she is not making the gift. Clearly it would be more in keeping with the principle of the changes we were making at the time if there were an exemption.

Senator Walker: We cannot hear you.

Mr. Brown: I was saying that it would be more in keeping with the overall principle of the amendments if there had been an exemption; it would be an improvement if there were an exemption.

Senator Beaubien: If the husband leaves \$1 million, which the wife gets the interest on, and he leaves \$200,000 to a hospital...

Mr. Brown: At the end of the time?

Senator Beaubien: Yes. Then when she dies there is no exemption?

Mr. Brown: That is right.

Senator Beaubien: The estate would pay tax on the million?

Mr. Brown: That is right.

Senator Beaubien: Can she deal with that in her will?

Mr. Brown: Unless his will gives her the right to specify the charity I suppose she would be unable to overrule his will.

Senator Leonard: If we were to draft an amendment accordingly it would be an improvement to the bill?

Mr. Brown: I think it would be more in keeping with the original spirit.

Senator Leonard: More in keeping with the principle of the bill.

Mr. Brown: Yes.

Senator Phillips (Rigaud): I think for the benefit of honourable senators we might relate this to the information we received from the Ontario Branch of the Canadian Bar Association. It is item 4 on the list of draft amendments.

The Chairman: It is item 4 in the brief.

Senator Phillips (Rigaud): We might tick off the views of Mr. Brown as they relate to the data we have.

The Chairman: Honourable senators will recall that another point that developed was the effect of lumping the various gifts from different husbands to the same wife. The example quoted was where the husband with a small estate left the life interest in that estate to his widow and the residue to his children; the wife remarried somebody who had been married before and may have a family, but who had greater means; then he died and there was a life interest to this same donee on the second time round with the gift over to his children; then she died. The difficulty presented to us, which appears to be factual and legally true from the bill, is that there would be a lumping of those various deemed-to-be gifts and the rate of tax would be higher as a result; therefore the burden on the children of the first marriage would be substantially greater than it would be if one were just applying the rates to the value of that first estate when she died. I think that is a correct interpretation of what the bill says, is it not?

Mr. Brown: Yes, sir.

The Chairman: When this provision was being drafted was any consideration given to

the hardship that might result in those circumstances in creating substantially higher rates of tax?

Mr. Brown: When the Government asked us to investigate the methods by which this type of trust could be exempt when the husband died, there seemed to be two broad alternatives open. One was to consider the property still part of the husband's estate, and perhaps you might look at it in terms of a postponement of tax, if you will, until the wife died. Then the same thing could have been done with respect to remarriage, and the same thing could have been done with respect to another point raised by the Ontario Branch of the Canadian Bar Association, namely looking after children in the meantime.

The second alternative was to treat this kind of trust in the same manner as if the property had been given outright to the wife.

Those seem to be the two main alternatives open. Each of them carries with it some disadvantages. The Bar has identified one of the problems that can arise under the course that the Government chose, but I think senators last week commented during the hearings on some of the problems that could arise under the other approach: the question of how long an estate stays open and the question of determination of what rates to apply at various times of this postponement process, and the fact that executors like to see an end at some time to their potential liability for estate taxes.

The short answer would have been, yes, we gave consideration to this. I just felt that I would like to indicate some of the considerations that came into play in choosing the legal fiction of treating the property as if it belonged to the wife.

The Chairman: It occurred to me that it would be helpful if you put what I would call a simple provision in the bill and said exactly what you meant in clear language that would not create any conflict anywhere else. You would say that for purposes of determining the rate of tax to apply in relation to the first estate that is created, the rate of tax shall be governed by whatever is in the amount of the estate. That would be the combination of some part of the donee's own wealth plus the deemed to be gift from her husband and going on to the children. That would give you a rate of tax that would clearly reflect the relationship between the first husband and

the wife. It would only be for purposes of determining the rate to apply to that portion of the estate. It would not be difficult to devise language which would say that very simply.

The net result might be that the revenues would be less because obviously if you lump several of these together and get a higher dollar amount you are going to get a higher rate applicable. If you divide for purposes only of determining the rate the net result may be to produce less income. The appealing thing is the fact that because of this way of doing it the income of the children would not be as substantially lessened.

Senator Beaubien: It is the small estate in each case that takes the burden of this injustice. It does not seem to make any sense that if a man leaves \$100,000, that just because his widow remarries that that man's children, instead of paying a very small tax on the \$100,000, would have to pay about half, which is the maximum. It does not seem to make any sense at all. Surely it is just sloppy work in the way the bill was written.

The Chairman: Since Mr. Brown has explained how they interpret it, I think we have to accept that there was a consideration or some rationalization. They did not rationalize enough as far as the children's position is concerned.

Senator Beaubien: Is there any way in which the wife could renounce the first \$100,000 and let the children pay the tax on that \$100,000 and take the money?

Mr. Brown: I do not think there is such a method at the moment. Senator, the decision reached and the instructions we were working under when the drafting was being done was to equate the position of a wife who inherits \$100,000, as you mentioned, with the position with the wife that got a life interest under the trust. We knew we might be getting into difficulty in the route we selected because it is obviously an artificial legal concept. It is not her property and everybody understood that we were getting into potential trouble when we did that, but not to do it would have meant, in many cases, that there would have been an immediate tax. It was felt that, particularly in a country with three provinces operating on a succession duty principle, it was not open to the Government to do as the Americans do. The Americans do not allow such a trust to qualify for an exemption. It was felt that it was not open to

Canada, not only because of differing views by the governments of the two countries, but also because of the Provinces of Ontario, Quebec and British Columbia, which have succession duty acts. If the federal Government put tax pressure on people to leave gifts to widows outright, it would be putting pressure on them to leave their estates in such a way as to trigger two provincial taxes. This is how we got to where we are, senator, try to equate the two positions.

The Chairman: Mr. Brown, if you followed the suggestion which I made it would accomplish the result of lightening the burden on the children of the first husband. If you establish rates of tax in relation only to the value of the estate, which was comprised of what the husband had given over and whatever the wife's estate might be, some portion of that, the effect would be lower taxes to be paid.

Mr. Brown: In the case given, we had three lumps, to use your expression. Your suggestion would be that we would determine rates by reference to two of those lumps.

The Chairman: Yes.

Mr. Brown: What would we do with the third lump?

The Chairman: My suggestion is that you take the wife's personal estate. That is one lump. You have two other lumps added together, what comes from the first husband and the other which comes from the second husband. I am suggesting that you could not obviously put the wife's personal estate and add it to each one of the other lumps, because that would be really piling tax on tax. You might arrive at some arbitrary division. You might say, for purposes of determining rates, we will take half of the wife's personal estate and add that to the first lump and take the other half and add that to the second lump. The result will be fairer for the children of the first marriage, in relation to what they get, under the will. In other words, it will establish a lower rate. What is objectionable about that?

Mr. Brown: I would like to think about your suggestion.

Senator Molson: Mr. Chairman, I still do not know the reason why it would be impossible to set the rates at the time of the death of the husband. This puzzles me. There must be a reason why it cannot be done. It sounds, on the surface, rather simple.

The Chairman: One factor may be missing at the time the first husband dies and that factor is, what is going to be the amount of the donee's, the wife's personal estate?

Senator Molson: That would be only established on her death.

The Chairman: That is right.

Senator Molson: Why should the other two be accumulated? Why should not the rates on the first and second husband be established first? I am puzzled why it could not be done, to eliminate this problem of the children getting unfair treatment or being treated differently.

Mr. Brown: Senator Molson, the amount in that trust may be quite different on her death than on his death. It could be considerably less, as well as being considerably more. I think this would raise, after the event, complaints about setting the rates by reference to something that did not pass. I think that is the simple answer.

The Chairman: That is only the question of the time at which you make the calculation.

Mr. Brown: If you do not make it immediately you have to decide to give the lower rates in the schedule to the distribution at the time of the husband's death and reserve the high rates for those that inherit on the occasion of the wife's death, who one assumes are the closest family, or decide to recompute the rate on everything at the time of the wife's death, which of course would keep the original estate tax liability open. So I think there may be other solutions. I just want senators to know that we understood the problems we were getting into, and we thought we understood some of the ones we were avoiding.

Senator Phillips (Rigaud): There could be a case where the widow would keep on marrying, but realistically, you can think of a great number of occasions where they are remarried once. I think honourable senators are particularly interested in protecting the beneficiaries of the first husband. I do not think honourable senators are too much concerned about beneficiaries if the widow remarries and there are other beneficiaries. We want to consider the greater number of cases where the beneficiaries other than the spouse would be subject to hardship. We want to be realistic about it and we want to see that in the great number of cases that justice is now being done.

The Chairman: I think that is a good point, because we were talking realistically about the situation in regard to children. You could also make an assumption—Mr. Brown has made a number—that on the second time round the widow may marry a man who had less means than the first husband and then the rates could go the other way.

I am simply trying to avoid the penalty of any reduced income to the children of the first marriage, where that may arise. It may not arise in the other case.

Senator Molson: That would only happen if the first husband were extremely well off—if we are being practical—if he left the widow very well off.

The Chairman: I would suggest we cannot make all those assumptions. I think we would have to read the bill realistically, that where there appears to be an obvious penalty and the children are being hurt.

I understand the officials want to have another look at it.

Senator Leonard: It is just for consideration in an effort to find a more equitable way of dealing with the problem.

The Chairman: Was this a question, senator?

Senator Leonard: A suggestion.

Senator Beaubien (Bedford): If a man with \$100,000 leaves it to his wife, and if she marries again and has children, and they are taxed as to 50 per cent, surely to goodness that is not fair. If he knew that the tax on \$100,000 was going to be 50 per cent, surely he might make other dispositions. I think that is terribly wrong. He has left it to his children, or he thinks he has, with his wife having a life interest. I think it is a terrible way of dealing with it.

The Chairman: I think Mr. Brown understands the problem. We have presented it realistically and he is going to have a look at it.

There is the other aspect to this. The question was raised as to whether, where you have different executors of the husband's estate and the wife's estate, and whether the situation could be created where the minister, at the request of the executors of either estate or both, is required to divide and give a separate assessment. My understanding is that, I think the bill goes so far, does it, to say that he may. Does it go that far?

Mr. Brown: I think we feel the law requires that now. Mr. Linton may like to say something, but I think the practice is to send an assessment to the executors.

Mr. W. I. Linton, Chief, Tax Base Research Section, Department of National Revenue: Yes.

Mr. Brown: We have this problem now, of course, with property passing directly to some beneficiaries, as well as passing through the executor's hands. The practice is to send one assessment to the executor, and the beneficiaries arrange how they will bear the burden amongst themselves. But any time they ask, the department does provide individual assessments. In fact, I think the law requires that the department do so.

Mr. Linton: There is an unreported case relating to a provision in the act which says that a notice of assessment to the executors is taken to be a notice of all successors, and that provision was held not to be adequate to enforce the liability of a successor. Therefore, following that, we would have to issue a separate assessment when it was demanded.

On the other hand, in many, many cases, the executors of the two will be the same people and a separate assessment may not be necessary and forgoing it will save that much paper; but where there is a divergence, in the case that the Bar is worrying about, we would have to assess the people we are trying to collect from if it were demanded.

The Chairman: Is there any other question on that?

Now, Mr. Brown, there is another question about the dilemma, as the Canadian Bar brief puts it.

Senator Phillips (Rigaud): It might again be desirable to draw honourable senators to the item we have been discussing. It is the amendment, item 2.

The Chairman: Yes, item 2(a) in the brief of the Canadian Bar Association.

Senator Phillips (Rigaud): Thank you.

The Chairman: There is another item in the brief of the Canadian Bar, which we discussed the other day, item 5 and we might look at items 5 and 6 together.

Item 5 is the dilemma of the testator who wished to give his executor power to support dependent children as well as his wife. It may be we should talk about that one first.

Mr. Brown: Honourable senators, we did consider this problem. Again you have here one of the results of considering the property her rather than his.

I might point out here that again the American general approach will not consider this as being exempt property. We did not think that was acceptable in Canada, that if the property is under the wife's control, well enough, but if we are going to give this exemption—and we felt we should at the time—then we have the problem of what happens when sums start going to the dependent children. If the system is to be viable, you would clearly have to have some tax on that occasion. Otherwise you would have a massive leak in the dyke, with everything left in trust for the wife but with power to encroach for the children. It is exempt at that time, and it is encroached for the children and the whole estate is passed with not just less tax, but with no tax.

On the other hand, when the wife has nothing to do with what passes to the children in this instance—or even the timing of what passes to the children—and she has not had the use of the property for any length of time before it is given over to the children—then it does not seem an acceptable result to impose upon her the creation of a cumulative gift sum—or, in other words to consider this as being one of her dispositions.

It seems one thing, and acceptable to the Government, to create a situation where it is included in her estate if she had had the use of the property, or the income from the property, throughout her life, but it seems another thing to suggest she will be considered to have made a gift of the property when she may have had it for a very short time.

This was the thinking behind the situation that you find in the bill, whereby the support for the dependent children would have to be either looked after by the wife or alternatively would have to be provided independently and subject to tax at the time her husband died.

The Chairman: You have no other comments?

Mr. Brown: No, Mr. Chairman.

The Chairman: If the life interest goes to the wife and the husband expresses the wish that the wife will take care of the dependent children, she is really doing it out of her money.

Mr. Brown: Yes.

The Chairman: Suppose her money at the time happens to be the income she has received from the husband's estate; it will be money that she has spent and it will not be there when she dies.

Mr. Brown: Right, sir.

The Chairman: Therefore, it would not be gathered up, even on the deemed-to-be gift, in the tax on her estate.

Mr. Brown: In much the same way that any support payment is no longer there at the end of the time. If the wife drew the capital out of the estate—because there is nothing in the bill that precludes that, as you know—and she used that for the support of the children, it is quite right that the money would be gone when she died.

The Chairman: And there would not be any carrying back into the deceased husband's estate?

Mr. Brown: In much the same way as if he left it outright to her and she spent it on one thing or another.

The Chairman: What you are suggesting, then, is that, on the basis of the bill as it is, it is a matter of the language or the method which the husband employs in the drafting of his will in relation to the children that would either create tax or make no tax payable.

Mr. Brown: I think that is true, sir. I would like to add this point, however, that, if the wife encroached for large sums and then gave them to the children, she would then in fact be making gifts to the children, and that would, of course, if the gifts were above the exemption levels, occasion a gift tax.

The Chairman: Oh, yes.

Mr. Brown: But, to come back to what you said, yes, if the husband accomplishes this purpose by a suggestion to his wife, then the total amount in the trust would be exempt.

The Chairman: Except for the problem of gift tax.

Mr. Brown: Yes, if the sums were that large.

The Chairman: I mean the gift *inter vivos*, where the wife would give to the children.

Mr. Brown: If the sums were so large as to trigger the gift tax, if they were beyond the

normal support and if they were beyond the exemptions, then there would be the gift tax problem. Up to that level, and I think it is in that context that I should assume that the Bar puts forward the problem, the testator would have to deal with it by the method you suggested.

Senator Phillips (Rigaud): I am inclined to agree with Mr. Brown on this, Mr. Chairman.

The Chairman: I am heading in that direction myself. It is a matter of draftsmanship.

Senator Phillips (Rigaud): The testator in dealing with dependent and infirm children can do so at the time of making his will. No confusion need arise, if he does so, in terms of anything he gives his spouse.

The Chairman: The other aspect of that was put forward by the bar in their item 6; namely, the practical difficulty in obtaining deductions for infirm children. Their point of view was that the bill does permit generous deductions for dependent, infirm children, but that, to claim the deductions, the benefit must be paid to the infirm child before his 40th birthday. The bar says that in most cases of infirmity this is out of the question and parents will set up lifetime trusts even though the deduction be lost. They suggest that the 40-year rule for trusts should be relaxed.

What comment have you on that?

Mr. Brown: Mr. Chairman, as the bill is now drafted, with respect to this type of trust the present value of the life interest in this lifetime trust would meet the tests as the bill is interpreted by the Government lawyers. So that they would not lose the total exemption, if they put an amount in and gave the income for life to this infirm child. In that case the full present value of that stream of income for life would be exempt. And, of course, that is computed on normal mortality tables; there are no special tables loaded against the infirm.

It is true that the full capital would not be exempt. The portion that would be exempt would depend upon the age of the child at that time. So they would not lose all of the exemption. Whether there was an exemption for the gift over would depend, I take it, upon whom the gift was to. If it was another child it would come into the computation of the \$10,000 exemption for that other child.

The Chairman: It would be only the excess that would attract tax.

Mr. Brown: Yes.

The Chairman: Have you an illustration of that in mind?

Mr. Brown: Do you have enough feel for the mortality tables to pull one out, Mr. Linton?

Mr. Linton: What a person could do is to leave money in the trust with a provision that the trustee would hold it and use the income for the infirm child or for his needs and, so long as the whole life income was for either him or his needs and for no other person, then the present value of it, depending on his life expectancy, would be an absolute and indefeasible interest and would be entitled to the deduction. The amount of that would depend on how old the child was, of course. The table is here. If the child were 20, for example, the value of the life interest would be about 80 per cent of the capital.

The Chairman: You say to that extent there would be an exemption.

Mr. Linton: Yes.

The Chairman: Where is that under the bill?

Mr. Linton: Because the life interest the child has would be absolute and indefeasible.

The Chairman: Oh, yes. In that sense, then, there is provision in relation to infirm children and that, in a practical way, would appear to be capable of dealing with the normal situation that might arise.

There would not appear from what you have said to be any need to deal with the recommendation made by the Bar Association.

Mr. Brown: That is our feeling, sir.

The Chairman: Now we come to another question that is bothersome. In section 3 of the bill, starting at the bottom of page 21 and then carrying over, you find the deductions that you are entitled to under section 7 (1).

Section 3 of the bill at the bottom of page 21 repeats the first three subsections of section 1 of the act and substitutes what you find on page 22. This deals with the exemptions.

The introductory words do not appear in this section as set out on page 21 of the bill, but the introductory words of the act are:

For the purpose of computing the aggregate taxable value of the property

passing on the death of a person, there may be deducted from the aggregate net value of that property computed in accordance with Division B such of the following amounts as are applicable:

Now the first one is on top of page 22 and you will notice that the language there is as follows:

"(a) the value of any property passing on the death of the deceased to which his spouse is the successor that can, within six months after the death of the deceased or such reasonable period as may be reasonable in the circumstances..."

be established as being something to which she is indefeasibly entitled. This is the value which is deductible before you start determining the rate of tax on the passing of the husband's estate over to the spouse.

Then when you come to (b) dealing with a gift in the lifetime or by will that is indefeasible and which was made by the creation of a settlement, it is the value of the gift. Again in law there is a great deal of difference between the value of any property which passes outright and in (b) on top of page 22 it is the value of the gift, and if it is a life interest to the wife that is a gift, then that would be the value, isn't that right?

Now when I come to the next point which I need to deal with before I can put my question, what is taxable in the wife's estate is the value of the property under this bill. Now how do I correlate these? I think the Bar Association raised this question in 9(a) under the heading "Language Clarification in Section 7" describing deductions, and the first one is the value of property, but not of the gift. That is on page 4. Now what comment have you on that? I may say that the minister in speeches and otherwise rather looked through the word "gift" and I think he spoke of property.

Mr. Brown: Perhaps I can ask Mr. Linton to give the explanation of this. We feel the way it is drafted accomplishes what we set out to do and accomplishes what has been purported to be the intention of it.

The Chairman: Maybe you could tell us first of all what you set out to do.

Mr. Linton: The intention is in (b) to allow the deduction of the whole amount of the fund which is covered by the life interest of the surviving spouse, and the value of the gift is regarded as the value of one gift to

which there are many successors in this kind of case. Where it comes back by 3(la) into the estate of the spouse—on page 20—it does refer to the fact of a donee receiving from his spouse a gift in respect of which a deduction was allowed so that if the deduction was allowed in respect of a piece of property, that is the property that comes back in. Therefore we regard the exemption as being an exemption of either the whole fund if she is the full life tenant or a limited amount if she is a limited life tenant, limited to a certain annual income.

The Chairman: That does not seem to deal fully with the question, Mr. Linton. The problem arises under (b) and then in relation to the large letters (A) and (B). The Bar Association suggests it should be the value of the property which is held in trust.

Mr. Linton: Well we think that the language does the job, even though the Bar Association does not think so; the job that the government wanted to do and we think the Bar wanted to do.

The Chairman: Maybe you will state it very briefly for us and assume that we only understand very simple words.

Mr. Linton: The situation in (B) would be a situation where a spouse was left all the income from a fund up to an amount, say, of \$5,000 a year. It is proposed by regulation to provide a deemed capital that will yield that annual income by taking a notional rate of return which has not yet, as far as I know, been determined. The amount deductible under (B) of (b) would be the lesser of the value of the fund or the capital that would notionally produce the annual revenue the spouse was bequeathed.

When in turn the spouse dies the amount that would be brought into her estate would be the lesser of that same notional value or the then value of the fund, and the fact that the reference is to the value of the gift does not, we think, preclude that treatment.

The Chairman: And as a matter of interpretation with the present knowledge you have of this bill, is that the way you would interpret it and apply it?

Mr. Linton: Yes.

The Chairman: Any other questions on that point?

The other question that arises is in that same section at (B) on page 22 where they

talk about periodic payments. It would appear from that section that what you are contemplating is a capital fund which will be large enough not only to provide for the periodic payments of an ascertained amount to the spouse but that there will be an excess and therefore you could have a number of different interests having some shares in that larger capital fund. Is that correct?

Mr. Brown: Yes, sir.

The Chairman: Then to the extent of the periodic payments there you would have to capitalize or value that because that is where the exemption will occur, and anything in excess of that would come into the husband's estate.

Mr. Brown: Yes, sir.

The Chairman: That is fine. I can follow that. But then you get into (ii) at the bottom of the page where you impose some restriction, and I think the difficulty arises because we were trying in (ii) to deal with both (A) and (B). You see you say there:

(ii) no person except such spouse may receive or otherwise obtain, after the death of the deceased and before the death of such spouse, any of the capital of the settlement...

Now if you stop there, of course if she is entitled to all the earnings of the capital fund there will be no problem, but where she gets periodic payments and other people have interests, what you are saying there is that if there are other interests no person other than the spouse, during the lifetime of the spouse, can encroach on the capital of the fund even though you may have other interest, in addition to the spouse, in the fund. I can understand that, but when you go and say, "or any use thereof," to me "any use thereof" seems to imply, for instance, the earning of interest on the money, and if in any year there is an excess of interest over and above the amount of periodic payments that must be made to the wife, it would appear you have shut the door on any payment out of that in any year in which the excess occurs.

Mr. Brown: It certainly was not our intention, and we will ask Mr. Linton to comment on it in a minute. I think the feeling of the draftsman was that the phrase that follows—really it is not a phrase, but the long bit that follows "or any use thereof," making specific reference, as it does, to "the income of the settlement" and to that particular part to

which the spouse is entitled, that all being there, would cause the phrase "or any use thereof" not to refer to this kind of income payment.

Mr. Linton: I think that was the intention.

The Chairman: In other words, earnings in the fund or income in the capital fund in excess of what is required to meet the periodic payments of the wife are locked into the fund as long as she lives.

Mr. Brown: It can be paid out.

Mr. Linton: It is not locked in; locking in is the opposite of what is intended, but the income of the settlement to which such spouse is entitled cannot be invaded.

The Chairman: But this use of the words "any of the capital of the settlement", you cannot pay out except if the widow may encroach—that is all right; but then it says, "or any use thereof," and that means any use of that capital.

Mr. Linton: Your point is that use of the capital includes the earning of income, but since it goes on to treat specifically of what the provisions are for income, "or any use thereof above," would be use other than the earning of income because the treatment of income earned is specifically dealt with in the next three lines.

The Chairman: This is the interpretation which you present, and your administration would be in accordance with that interpretation?

Mr. Linton: Yes. Perhaps I should take a sample and make it even clearer. If you had a fund of \$100,000 that was yielding \$50,000 a year...

Mr. Brown: That is a good investment!

Mr. Linton: I am sorry—\$5,000.

Senator Molson: Where can we get that sort of yield?

Senator Walker: That is what you call a growth fund.

Senator Molson: Perhaps I could have a talk with you after, Mr. Linton.

The Chairman: Then it will be too late. I would like to have a private chat with you, Mr. Linton.

Senator Phillips (Rigaud): I think Mr. Linton should be financial consultant of all the senators.

The Chairman: We have not been able to find a way to make that kind of earnings.

Mr. Linton: I should have said \$5,000 a year, and the widow was given all the income up to \$4,000, then there would be nothing to prevent the executors paying the other \$1,000 to whoever was entitled to it. That is the way we see it.

The Chairman: So it is possible to create, even under this bill, a capital fund and to provide for periodic payments of an ascertained amount to the spouse, to the widow, and also in the same settlement document to provide, for instance, for the children to receive income under that same document in relation to the excess income that might be earned?

Mr. Linton: The prior right must be the widow's, the spouse's.

The Chairman: Yes, the prior right. Then her interest would be valued and that would be the exemption?

Mr. Linton: Not actuarially, but as a capital sum to yield that.

The Chairman: That is right; that is why I used the word "valued". Then as to the other interests, I assume there would have to be a valuation there.

Mr. Linton : Of what was left over.

The Chairman: Yes, of what was left over, and that would be included in the father's estate?

Mr. Linton: Yes, that is right.

The Chairman: Is that clear? I thought it was a little confusing.

Senator Phillips (Rigaud): This leaves the question as to whether it is desirable to amend the law by way of clarification or whether the interpretation given is sufficient.

Senator Leonard: I think it is clear enough, having had the benefit of Mr. Linton's statement, that it is intended to be that the capital and the income are solely for the benefit of the spouse. It is to prevent the money being used, not for her directly but for somebody else's use and somebody else having a claim on it. It is as long as there is a certain amount, and that is clear.

The Chairman: On the question of amending, at some stage the department very often, when it runs into situations of this kind in a succeeding year, if some question is raised, makes clarification and you might then have an amendment, but I think for the present this would not be a basis for making an amendment to the section because I think the witness has made it very clear.

We have several other things raised by the Bar Association—the laws on foreign tax credits and the laws on provincial tax credits. Foreign tax credits is No. 7. Have you some comment on that, Mr. Brown?

Mr. Brown: The situation as it is in the bill amounts to a deduction for foreign taxes rather than a credit for foreign taxes. There is no doubt as to the effect of the provisions as they are. This makes a family's tax position identical to that which it would have been if the property had been left outright to the widow, if the property left outright to the widow involves a foreign tax, there would be a foreign tax at the time the husband died but no federal tax. Then when the wife dies, if the property were still foreign there would be foreign tax and foreign tax credit. In the trust situation, when the husband died there would be foreign tax and no credit because there was no federal tax; and when the wife died there would be a federal tax, but because there would not be a foreign tax there would not be a foreign tax credit.

I do not know what the situation will be in the United States. The outgoing administration recommended very similar treatment of trusts with life interests to wives as is in this bill, and they are very silent on what they would do about foreign assets in similar circumstances. But as things stand, we have a deduction rather than a credit, and I think, again, that is part of equating the position of the trust with the outright leaving of a property.

The Chairman: Such a trust, for instance, does not attract any tax in Canada on the death of the husband.

Mr. Brown: No.

The Chairman: But the estate on the foreign assets may pay taxes in whatever that country is, and the net result is the estate is that much less.

Mr. Brown: Yes.

The Chairman: But it does not necessarily follow that the exempt gift will be that much less unless it is a gift in trust of the whole estate.

Mr. Brown: And it is not always so that the tax comes out of the gift.

The Chairman: It would be difficult to make an assessment percentagewise of how many cases there are in respect of foreign tax for which you would get no credit or deduction here in the way of reducing the gift as against simply reducing the amount of the estate.

Mr. Brown: I am trying to think of circumstances in which the foreign tax on a particular gift would under our structure provide neither a credit or a deduction.

Mr. Linton: That would depend on the part of the estate from which the tax was payable. If it were a specific gift which incurred foreign tax, the normal place for the burden of tax to fall would be on the estate proper—the residue of the estate.

The Chairman: Yes. Then, to some extent it becomes a question of drafting, because if the trust is drawn in a way as to amount in any event to \$100,000 of that estate, then the trust would not be affected by the failure to qualify for the reduction.

Mr. Brown: That is right.

The Chairman: It would only be affected where it would wipe out the life interest, really, in the whole estate.

Mr. Linton: No, in more cases than that.

Mr. Brown: But in most of the other cases it would serve to reduce it.

Senator Beaubien: If a Canadian died leaving everything to his wife, and if the whole estate was in the United States and was taxed there, what would be the situation in respect of his wife when she died?

Mr. Brown: When he died—under our treaty now I suppose it is a flat 15 per cent.

Mr. Linton: Yes.

Mr. Brown: So, when he died the 15 per cent tax would be paid to the United States, and when she died she would be taxed on the 85 per cent that was left.

Senator Beaubien: The United States would tax her?

Mr. Brown: The United States would not tax her.

Senator Beaubien: That is, on the second time around they would not tax her?

Mr. Brown: No.

The Chairman: Then there is the provincial tax credit.

Mr. Brown: Yes. I think the Bar is worrying about what the Government may do having regard to the definition of the word "appointed".

The Chairman: When you say "government" you mean a provincial government?

Mr. Brown: No. They made quite a point of the fact that the federal Government has used a different word "appointed" and that they inferred that the intention is for the provinces to lose the "appointed" status when they get out of the death duty field. There was nothing Machiavellian about it. The intention was that should a province such as Ontario or Quebec decide to adopt the same principle with respect to trusts for the benefit of wives as has the federal government, it would then be necessary to "appoint" that province up to the time that they did, and not to appoint it subsequently. The idea, of course, is to carry through a credit for the provincial tax in order to be certain that the wife gets the credit when the property is brought into her estate. So, if the husband died in Ontario, while Ontario was under their existing system, then Ontario would tax the property in the trust, and the mechanism is to make certain that when the widow dies she gets an Ontario abatement on the same proportion of the assets then in the trust.

We felt that we could not use just the word "designated" or "prescribed" because the possibility exists that Ontario will switch its treatment of trusts. While we want to have the carryover abatement so long as the present difference obtains between the federal Government and the provincial government, we would no longer want to give an abatement on the basis of where the property was when the husband dies, in the case where Ontario was also waiting until the wife's death. In that case the situs at the time of the wife's death would be appropriate for the abatement.

So, I think their problem is only in respect of the regulations. They were a little puzzled as to why the Government used the word

"appointed," and they expressed their fears, and their fears are not well-founded.

I am reminded that, under our treaty, apparently we have not got the Americans to agree to a flat limit of 15 per cent. Their act concerning foreign estates contains a sliding scale.

Mr. Linton: It is the same sliding scale that is applicable to their domestic estates.

Mr. Brown: Yes, so far as the higher amounts are concerned, but it is only paid once.

The Chairman: Are there any questions on this? It is well to get frightened in advance sometimes, Mr. Brown, but you have relieved our minds.

Senator Walker: If I have my stocks to my son and he gives me a non-interest bearing note or debenture in return, what is the position? I am concerned about this gift tax which gets up to 75 per cent. Is there any chance that interest at a reasonable rate might be charged on the non-interest bearing note so that over the years it would accumulate to a large sum, and be heavily taxable as a gift? Do you understand what I am talking about?

Mr. Brown: Yes, and I think I should turn to Mr. Linton, but perhaps I could make two preliminary remarks.

In a freezing, the key thing has always been the valuation struck at the time of the transaction. Therefore, one has to look at what was taken back when the growth assets were turned over. This is really the key thing in any dispute between the taxpayer and the Government over whether they have in fact frozen an estate at the amount they thought they had. So, I would not want to make any careless statement that did not point out that there was that on the other side.

As to what the subsequent effect is one has to look at the possibility of action by the father year by year, and it may be that the annual interest on the note would be construed as an annual gift.

Now that I have stuck my neck out, perhaps I should ask Mr. Linto to cut it off.

Mr. Linton: I do not think there is much more to be said. Mr. Brown has given the essence of it, and nothing in the present amendment affects the situation, except that the rates, of course, are higher.

Senator Walker: The rates of gift tax?

Mr. Linton: Yes, but whether there is a gift or not would depend on various circumstances.

Senator Walker: In other words, if it is a bona fide exchange or sale...

Mr. Linton: If it is a bona fide sale so that the person selling it takes back something that has fair market value equal to what he has transferred, then there is no gift. If the transaction specified nothing further then that what is taken back is an interest-free obligation, it would certainly not be regarded by the Department as being at its full par value.

The Chairman: It could be if what was given was in the form of a security.

Mr. Linton: But it was a non-interest bearing note. We would argue that a non-interest bearing note is not worth its par value.

The Chairman: That is where you would start?

Mr. Linton: Yes.

Senator Walker: You would want a more sophisticated security?

The Chairman: We are getting down towards the end of these objections. There is the situation, you will recall, of where there is in the grant of a life interest to a spouse what we call a re-marriage clause. Under this bill such a gift is not regarded as being indefeasible, and, therefore, would not qualify for the exemption. The Canadian Bar Association raised this in relation to both estate tax and gift tax. The nub of the complaint would appear to be that in those circumstances the gift might not qualify for exemption, yet the spouse might never remarry. Therefore, it seems to me that it should be drawn in such a way that there is exemption; it is being defeated by the remarriage but if it is not so defeated then it is a proper exemption.

Senator Beaubien: In other words, the tax would be delayed.

Mr. Brown: This again raises the problem of keeping estates open. In discussing of the first problem raised this morning, we spoke of the two broad avenues that it seemed possible to follow. One was keeping the husband's estate open or recomputing it as time went on to take account of subsequent events; the other was taking this other broad road. It was

the difficulties that were seen down the road of keeping estates open that caused the Government to go down the other road of this legal artifice that the property was the same as hers.

The Chairman: Would you necessarily have to do that? There is the capital fund. Let us assume it qualifies for exemption and there is this clause about defeating the trust by remarriage, and at some stage the widow remarries. Therefore, the disposition of the money in a fund on which she is entitled to a life interest would depend on what the husband had provided as to where the money would go in such event, but at least there would be money there on which to levy any tax you thought you were entitled to.

Mr. Brown: Yes, there would be. However, we have the problem of rates. Which rates are we to apply? If we are to have finality at the time the husband dies with respect to what is settled at that time, I suspect the only viable approach would be to use the bottom rates in the schedule at that time, otherwise they might never be used. One would be left then in a situation where the very top rates would be used with respect to what was being set aside for the immediate family. This is one of the problems of a general nature that we faced if we tried to keep estates open. Basically we were faced with this situation, although in a trust obviously the property is there and we could put a claim on it.

The Chairman: Would there be a problem if the husband drew the will in this form and the widow remarries? The husband in his will would have made some provision for where that capital is to go in such event. Would you not then treat it on the same basis as if the donee had died?

Mr. Brown: Quite, but my point was that if the widow remarried within a reasonable period after the husband had died, maybe four or five years later, at that time there would be a sizable estate, perhaps completely at the 50 per cent rate. This is one of the problems of going down that route; either you have to leave the tax with respect to other gifts at the time of death unsettled, or you have to settle them at the bottom rates of the schedule and leave the trust assets to be taxed at the top rates. Further, there will, of course, be instances in which the husband would rather have part of what he leaves on his death taxed then and another part—the trust assets—taxed as his wife's at her death,

so that they get two sets of low rates and exemptions.

These things are never black and white, unfortunately, and this was the thinking that lay behind going down the route that is mentioned. Once you start down that route it seems hard to impose on the wife the history of having made a gift at the time she remarried, so that for any subsequent property she is starting part way through the rate bracket. If you like, we have backhanded into the three lump situation that you mentioned earlier. Should she marry a less wealthy man you are imposing higher rates on the assets she has at her death because of the disposition of the property to the children of the first and, let us assume for my purpose, wealthier husband.

The Chairman: Could we put it this way, that you have thought of the problem?

Mr. Brown: Oh yes.

The Chairman: You have told us the pros and cons. You realize the question has been raised by the Canadian Bar Association, and that we have raised it here as well. Therefore, in those circumstances would you have another look at how you might deal more equitably with the situation and not create, as a result, higher tax rates.

Senator Walker: Hear, hear. So say we all.

The Chairman: I am only giving it to you in a limited area so I am not really robbing you of revenues, because I am dealing with the case where the wife may never remarry but she does not get the exemption because it is not indefeasible, because there is provision against remarriage?

Senator Molson: Where she did get the exemption and intended to remarry, she would be smarter to "blow" as much of it as possible, would she not?

Mr. Brown: Before she got there?

Senator Molson: That is what I mean. On the engagement day, shall we say.

The Chairman: Except that if it is a life interest you are dealing with, it is much harder to "blow", is it not?

Senator Molson: Yes, if it is a life interest.

Senator Beaubien: The children would not like it very much.

The Chairman: No, I do not think they would. It seems to me that there may be some way by which having a remarriage provision in the trust document should not prevent that trust from qualifying when in, I would say definitely, the majority of cases you do not have remarriage.

Senator Beaubien: Perhaps that is the reason why.

Mr. Brown: There may be several reasons.

Senator Beaubien: It depends how much he left.

The Chairman: Well, no, if there is provision against remarriage in the trust instrument, it does not qualify for exemption. The wife does not get hurt too much if there is any money in the estate at all; I suppose she becomes entitled to some return; even if the gift does not qualify for exemption it is still a gift to her until remarriage. The only thing is that it does not qualify for exemption, so she still gets it and the husband's estate pays tax at that time.

Mr. Brown: Yes, and not when she does remarry.

The Chairman: Maybe it is not as bad as it sounds, but would you have a look at it?

Mr. Brown: Yes. I take the point you have raised and we will look at it again.

The Chairman: We are getting close to the end of our consideration of these two items.

Senator Phillips (Rigaud): We should deal with the question of extending the period for revising wills. The Bar raised this in paragraph 1 of the first item in their brief.

The Chairman: That is where they raised the question and they suggested probably half the wills are totally or partly defective. You have quite a massive program of revision of all of those. As part of it you have to get the people in and educate them, and there may be many of them you cannot do that with because they may have reached a stage where they do not have the capacity of making a will. In any event, you cannot encompass that in a period of, say, up to August 1. The only benefit you get, up to August 1, is that you can take your choice of exemptions. Short of a question of policy, which the minister will have to deal with, I take it you have mentioned it to him. This is a serious matter and there must be thousands of wills when this

will becomes law that will be totally or partly defective and penalties will result therefrom.

Mr. Brown: It was for that reason the Government announced the August 1 option as to exemptions.

Senator Aseltine: That is not long enough.

Mr. Brown: That time, I was going to say, was six months from the day on which the details of the bill were made public. I did notice that the witness for the Bar suggested it would take until the end of the century to revise all the wills.

Senator Aseltine: I have a thousand wills to redraw in that time. How can I do it?

The Chairman: You are not a good example, because I know you will get them done in time. What the Bar has suggested is that maybe you would deal fairly with these people by giving executors of those who die within a year of the proclamation of the bill an option to file under the old act or the amended act.

Mr. Brown: I think that is something I should bring to the attention of the minister. He will be here this afternoon.

The Chairman: Yes, at 3 o'clock. I understand he will have a chat with you beforehand.

Mr. Brown: Yes.

The Chairman: There is the question that was raised in the item 11 of the Canadian Bar Association's brief. It had to do with the matter of where there are variations in the will after the death of the testator. You may have variations of trust. I am familiar with them to some extent and I have done it a few times myself. What they have suggested is there should be an amendment to section 13, subsection (4) of the bill in order to recognize that situation. In other words, you should deal with the will as the final effective instrument rather than the will which the man drew and which the courts varied.

Mr. Brown: I think if the courts vary in accordance with the Dependents Relief Act or something of that nature where it is a redrawing of the will under compulsion, if that is the right word, there is no doubt that such changes are and will be recognized *ad infinitum*.

Mr. Linton: With perhaps some reservation for an action that might be taken as an

harassment and never pursued. If taken and pursued with reasonable diligence I think they come under the reasonable vesting period provided in section 7(1).

Mr. Brown: The other general class would be redrawing of the wills under the Variation of Trusts Acts or based on agreement amongst the beneficiaries. The law as presently drafted provides the same time interval for this as with respect to the option on exemptions, which relates to redrawing wills. This is something I could also draw to the minister's attention.

The Chairman: What section are you referring to when you say the law now permits this?

Mr. Brown: I think this is under the same section that deals with the option.

The Chairman: You mean that is under subsection (4) of section 13 of the bill?

Mr. Linton: Yes.

Mr. Brown: As of now they have this opportunity to agree amongst themselves to overcome defects in the will, for the same period of time as has been given for the redrawing of the will. After that time one would revert to the old law—if the will did not make the best possible distribution, nevertheless it was the man's will and this is how the tax would be levied.

The Chairman: This provision in subparagraph 4 on page 44 would last for a limited period. The deceased would be one who died after October 22, 1968, and before August 1, 1969.

Mr. Brown: It conforms to the time given to redraw wills. It deals with the case where a man died before his will could be redrawn, and it has the same terminal date.

The Chairman: Any questions? There are two other questions. One was the question that was raised by Senator Phillips and I think there was some considerable discussion between Senator Phillips and you when you appeared before. What I was going to ask you was, if you have not brought this to the attention of the minister, if you would be ready to deal with it this afternoon. I am going to ask Senator Phillips if he has anything further to add.

Senator Phillips (Rigaud): I would like to add the following. I do not think Mr. Brown was here when I referred to it. That is where

there was some indication that the department thought that the Quebec Government would be repealing the provision of article 1265 of our Civil Code in the Province of Quebec which prohibits gifts between spouses. I stated that there was no such indication that the repeal was impending. I checked further and I find that there was introduced a bill known as Bill No. 10 which did not deal specifically with article 1265 only of our Code. The bill is defined as being an act respecting matrimonial regimes. My understanding is after checking with the representatives of the Quebec Bar that as of the present date it is not the intention of the provincial Government of Quebec to proceed with this bill because of serious objections that have been raised. This is not specifically in relationship to article 1265, but because the bill envisages a somewhat revolutionary revision of all the provisions in our Code which deals with the subject matter of matrimonial status and indeed with the existing statutes. The act proposes the introduction of a new type of marital status, all of which of course is creating a very serious reaction in our province, so that for all practical purposes I should like to draw Mr. Brown's attention to the fact that speaking as a Quebec lawyer, and I am sure all of those from Quebec are familiar with the subject matter will support me on this matter, that it is not realistic to assume that relief will be granted in respect of the allowance of gifts between spouses in the Province of Quebec, other than those covered by marriage contract. In other words, I am in a position to be a little more definitive than I was before and therefore I feel it my duty, on behalf of the residents of the Province of Quebec, to press for a revision of the law in so far as residents of the Province of Quebec are concerned—notwithstanding my disinclination to ask for a differentiation of rates between residents of different provinces, but because of the important increase in this escalation of rates in gift taxes and its relationship by way of a new philosophy to the estate tax rates. Although it is not so stated specifically in the statute, it would appear to me that there is this extraordinary situation resulting from an increase in gift tax rates from the previous figure of 28 per cent to a figure of 75 per cent and that this high rate would apply at \$200,000 instead of at \$1 million.

In view of this fantastic situation and the fact that we are dealing in this province with a very substantial proportion of the popula-

tion of our country, it would appear to me that relief is required.

I would like to suggest, if I may, Mr. Chairman and honourable senators, that in the consideration of this matter—which I imagine Mr. Brown should draw to the attention of the minister prior to his arrival here this afternoon, if it were at all possible—and with the greatest respect I think it would be helpful to the minister and to the administrators if the summary were made of those revisions in the proposed act which appeared to be desirable because reference is being made to at least two that are considered desirable—

The Chairman: I have them noted here, as we went along.

Senator Phillips (Rigaud): —and those that involve matters of policy—which are for the minister, of course, to deal with.

I, for one, speaking for all the Quebec senators who supported me on this question, because they are familiar with the Quebec law, those who are lawyers—and those who are not lawyers have been informed by the Quebec senators who are lawyers—that we considered this a matter of high national interest, that this subject matter of restrictions of C.C. 1265 receive serious consideration and, if it were not possible to introduce amendments at this stage of the bill—for a variety of reasons—we would be very much disturbed if we did not receive what would be tantamount—I am not saying this by way of criticism of the minister—we would regard it as a very serious matter if we did not receive an assurance that, at the first opportunity, the matter would receive consideration by way of amendment to the bill, meaning by that at the very latest at the next session of Parliament.

May I, with your approval, honourable senators and honourable colleagues, ask that very careful and serious consideration be given to the subject matter, that this bill be in force only for a period of three years.

This is not an ordinary bill by way of statutory amendments to the statute: it forms part of the warp and woof of the tax structure of our country. It is a revolutionary bill in the sense of ideological concepts, that is, the correlation of gift taxes to estate taxes. Incidentally, it does away with the normal decency of the human being to give gifts to others, which we have not dealt with at all. If one wants to give to third persons, we are subject to a tremendously high escalation of rates.

Our chairman, in the Senate, raised that question and he is strongly supported on this issue.

So far as honourable members of this committee are concerned, unless some are ready to dissent, and although I am a younger senator in terms of serving in the Senate, I would be tremendously happier if we received assurances that this revolutionary bill—and I do not use the word “revolutionary” by way of criticism of the Government—

The Chairman: I think the word is that it is “radically” different.

Senator Phillips (Rigaud): Radically yes, that is come to a time limitation and so that we all have a breather, and those who will be here in, say, three years time will be able to take this up and deal with it. Also, may I say that, if the Lord spares me, it may be that I could turn up here and deal with some of the points.

Senator Walker: As counsel without fee?

The Chairman: Shall we—

Senator Walker: May I interrupt for a moment? I think every senator here agrees with all the remarks made.

The Chairman: I mentioned that when I was speaking in the Senate. I have one other, Mr. Brown. If you would look at page 26 of the bill, you will see that there is a new subsection, subsection (4) being proposed to section 7 of the act. This deals with the computation of value of certain property and gifts. Could I have your explanation, Mr. Brown, as to what this means, and what it does?

Mr. Brown: The purpose of this section is to be certain that, if someone is receiving a tax exempt inheritance, tax exempt under the federal law, that this inheritance is not reduced in practice by the estate or succession duties on somebody else's inheritance. Or, to put it the other way, if it is reduced by the death duty on someone else's inheritance, to see that the exemption is reduced.

Also, it is drafted in such a way—to take one example that gave us some trouble, if someone dies in British Columbia, leaving assets to the wife, it is drafted in such a way as to be certain that the British Columbia succession duties on that inheritance do not reduce the exemption—so that we do not tax the British Columbia succession duties.

It is an involved process of trying to extend to the new exempt inheritance something akin to the same principle we have followed heretofore with respect to charitable bequests.

The Chairman: Would you not avoid the problem if, in connection with what you call a tax exempt inheritance, like \$10,000 to a child, or whatever amount of exemption it is you give to a widow—if you stipulated that these were net amounts. Then you would throw the burden on the rest of the estate.

Mr. Brown: I think that, in a way, this is what this is intended to do.

The Chairman: This is the statutory way of doing it?

Mr. Linton: Yes. I should perhaps add that it is somewhat like the treatment heretofore given to charities but it is a more generous treatment, and the charitable one has been amended accordingly to agree. The treatment of charities prior to this amendment would have involved, had there been any taxes imposed on that fund anywhere else, a reduction of the deduction for those taxes. As Mr. Brown explained, if taxes are imposed on an exempt fund, by another jurisdiction, the present provision will not reduce the deduction by that amount.

The Chairman: In other words, the exemption will be the full amount that is given, no matter what the treatment has been in any other jurisdiction that might have the effect of reducing the dollars?

Mr. Linton: Yes, as to the other jurisdiction's tax on the fund subject to deduction.

The Chairman: I have one other question. In section 113, in regard to the gift, I talked to Mr. Smith about this unofficially some time ago. I do not think we ever reached common ground on it.

I was concerned about the reference to section 8 and also to section 16 of the Income Tax Act on what is presumed to be income. That is in section 113 (e) on page 5 of the bill. That is the new section in the Income Tax Act, and both section 16 and section 8 of the Income Tax Act are referred to there.

As you know, section 8 proposes to tax a benefit or an advantage conferred on a shareholder or corporation in a certain fashion. Section 16 makes indirect payments income. In other words, if a taxpayer directs a payment somewhere else for purposes of section 16 it is included in his income.

What is the purpose of using both references there?

Mr. Brown: The gift tax provisions do not deal with gifts made by corporations at all. There is not tax on a gift by a corporation. It is only by individuals. Therefore, this is intended to deal with the situation where a man with a completely controlled corporation might chose to have that corporation make gifts to those to whom he might otherwise himself make gifts.

This gets a little complicated, but, if he had drawn the money out himself and had made the gifts, there would have been an income tax on the withdrawal of those profits and the gift tax on the giving of what was left.

If, on the other hand, he makes it direct, then the framework here says that by virtue of section 16 he would be taxed on any payment made to someone else, if he would have been taxed on it had he received it himself.

If that has happened for income tax purposes, we take it one step further and say it is also a gift that he has made. So that this is a tax on a shareholder to be certain that we have not left completely open a way of gift by controlled corporations.

The Chairman: So what you are saying is, if any person is required under section 16 of the Income Tax Act to include a payment that he has received, or if any person is required by virtue of section 8 to include in his income a benefit which has been conferred upon a shareholder, in both those cases these are gifts *inter vivos* and are subject to gift tax.

Mr. Brown: If I am right, the way it is worded is that they both have to apply at once, sir. Only if it is a transfer made by the corporation at the direction of the shareholder would this apply.

The Chairman: Oh, I see.

Mr. Brown: Section 8 is referred to for greater certainty that we would in fact be taxing the shareholder.

The Chairman: Section 16, within its wording, would be broad enough to cover the individual, whether he himself directed another individual to pay money to that individual instead of to himself, if he was entitled to it, or whether he did that in respect of a corporation. Would section 16 not cover all those situations?

Mr. Brown: Yes, sir, but it would cover more situations as well. It would also cover the situations as well. It would also cover the situation in which a man might direct someone to pay to the grocer the amount that he owes out of his wages or from any claim. So this was limited just to the shareholder situation.

Senator Molson: There is nothing here to do with charitable donations in that respect.

Mr. Linton: It might, I suppose, mean that there was a gift, but it would be a gift free of tax so that in effect no tax would result.

The Chairman: What you are thinking of is the situation where you cause a corporation, assuming you can give such directions and they will be honoured, to make a charitable contribution. That would be a gift under this wording, but the charity, if it is an exempt charity, would bear no tax.

Mr. Brown: Only if you would be taxed on the amount as income if you had drawn it from the company, would there be the problem of gift tax. So it does not add anything new to your income tax worries.

The Chairman: It appears to me that I have gone through all the points which were raised by the Canadian Bar Association and the Trust Association relating to various portions of this bill, other than any reference to rates and integration of rates. I deliberately have not dealt with those aspects, because those are questions of policy and the person to rise those with is the Minister. That is why I have left them out.

Senator Aseltine: There is one small matter I would like to have clarified. In arriving at the estate tax sum, you deduct \$10,000 exemption for each child over 26, who has been left that sum or more by the will of the deceased; you then also deduct the sum left to the spouse by the will; and then you deduct the basic exemption of \$20,000. The estate tax is then computed on the balance at the estate tax rates. Is that correct?

Mr. Linton: Not quite. The \$20,000 is deducted by reason of having a \$20,000 tax-free bracket. It is not deducted before you apply the rates, but when the rates are applied there is a \$20,000 bracket free at the bottom. So, in effect, you get that as a deduction, but it is not made as a deduction in the calculation.

The Chairman: In other words, you do not deduct the \$20,000 now. The other items are deductible but the \$20,000 is left in the total but that is the first \$20,000 which is free of tax.

Senator Aseltine: The reason I ask the question is that when you were speaking on this, Mr. Chairman, you used the example of two adult children and you deducted \$10,000 for each.

The Chairman: Yes.

Senator Aseltine: Then you said that you arrived at the tax by following the table, but you did not deduct the \$20,000.

The Chairman: Because it comes into the table of rates. The first \$20,000 there is not taxable.

Senator Aseltine: I am wrong, then, in what I state here.

The Chairman: You achieve the same result.

Mr. Brown: In technique, you are wrong, but not in result.

Senator Aseltine: I do not see that.

The Chairman: The result is the same.

Mr. Brown: If there were an estate, sir, with \$60,000 left equally among four children, the mechanics would be to deduct \$10,000 with respect to each child, leaving an estate sum of \$20,000. As on page 28 of the bill, the tax on the estate sum up to \$20,000 is zero.

Senator Aseltine: Let us take the example of a person with five adult children and at his death he leaves 50 per cent of his estate to the widow and 50 per cent to the children over that age. Do you first deduct the \$10,000 for each such child and then deduct the basic exemption of \$20,000 and then compute the estate tax on the balance?

The Chairman: No, you first deduct the \$10,000 for each child and then you deduct the spouse's exemption and then you get a figure which may be your taxable value, and then you go to your rate structure on page 28 and you find on the first \$20,000 in that you mark down nil, and then when you go on to the next \$20,000 you calculate it at 15 per cent.

Senator Aseltine: Is that not what I have done?

The Chairman: It works out exactly the same, but that is not the technique for doing it.

Senator Aseltine: But when you answered Senator's White's question why did you not take off the \$20,000?

The Chairman: Because it came into the rate. The result was the same.

Senator Aseltine: Well, I carried your computation through and you had \$16,000 and some hundred dollars and it should have been \$13,000.

The Chairman: Do you mean my arithmetic was bad?

Senator Aseltine: You did not take off the \$20,000.

The Chairman: Well, if it is wrong, do not act on it.

We are meeting at 3 o'clock this afternoon to meet the minister. He is operating on a tight schedule because he has to go to Europe to attend a funeral. I trust all honourable senators will be here at that time.

Whereupon the committee recessed.

Upon resuming at 3 p.m.

The Chairman: The committee will resume its hearing. We are meeting this afternoon for the purpose of hearing the minister.

We had a good session this morning, Mr. Minister, and we sort of allocated under different headings, on which we had submissions, various items that have been raised, particularly in the Canadian Bar Association brief, and I am sure that Mr. Brown and the others have given you some indication of that.

I made some notes on the headings myself. There was one heading concerning the point raised by the committee and also by the Canadian Bar Association, and that was on the question of the loss of charitable deductions under 7(1)(d), where the husband leaves a life interest to the wife and the remainder to charity.

My interpretation of what your representatives said this morning was that they agreed this was something they were not aware of at the time the bill was drafted, and that is a reasonable thing.

The Honourable Edgar John Benson, M.P., Minister of Finance and Receiver General: I think that is correct Mr. Chairman. Of course,

it is a possibility that will not arise until two people die after the legislation is in force who have chosen this way to proceed. I think the situation can be avoided, if one wanted to technically take care of the situation, by making the bequest to the wife or to charities to be designated by the wife. However, I think that in the long run this is not the kind of solution we should seek for this particular problem, and I am quite willing to undertake to change the legislation the next time it is opened in this regard and, indeed, I think this legislation will have to be looked at again next year, when we see how things are proceeding.

In the interim, through the provisions of section 22 of the Financial Administration Act, if a case should arise, which is very unlikely, I would undertake that the Government would hold the people blameless in this regard and protect their interests fully so that no one will get caught by this technicality. I think we will be open to the Act for several reasons, probably, after we see how things are working, and I would certainly correct this situation. In the interim, I will undertake, on behalf of the Government, to protect people who might get caught. It involves two deaths, and they are unlikely to occur, but it could happen.

The Chairman: There was another group which, for want of a better description, are called items which the departmental officials think are also covered by Bill C-165, but in respect of which objections have been made by the Canadian Bar Association and also by the members of the committee. The view of the department was that either they were adequately covered, in their opinion, or they agreed that as a matter of interpretation they would cover them in the way in which the submissions were made to us. I assume you have a list of the items. They include the separate assesment with allocation as between the assets of the husband and wife to whom property is deemed to pass, deductions for infirm children, loss of provincial tax credits, and clarification of the language in section 7(1)(b) as to the meaning of "value of gift" as it applies to a life interest.

If I might add this, I take it then, because your departmental officials said this morning, "This is the way we will interpret it," for the short run, as it is so late in this session, that would appear to me to be an adequate assurance, especially if it were coupled with the undertaking which you gave, that all doubt

would be removed from the language so the interpretation proposed is the interpretation that can be taken out of the particular sections.

Hon. Mr. Benson: On the points raised by my officials and those of the Department of National Revenue I would say that the Government will back their interpretation of the situation as it presently exists. If they have made an undertaking with regard to an interpretation then we will see that it is upheld, even if one should get into a situation where the Appeal Board or some other body said it was not the case.

This legislation is different legislation. It provides quite a change in estate taxes. It is going to take a little bit of time before we end up with something that everybody thinks is good law. We intend to move in that direction, but in the interim the answers that were given by the officials of my department and the Department of National Revenue will be supported by the Government.

The Chairman: Now, we had a particular group of items that were raised in the briefs submitted, and also in committee, and which your departmental officers said they would consider further. There appear to have been one or two points of view, and they rationalized these and came up with certain answers. Other points have been raised in committee, and we had an assurance from the departmental officers this morning that they would have another good look at these items, which means reviewing them in the department and giving them full consideration.

I am referring to such items as joining together unrelated estates where a surviving spouse remarries, and the proviso that defeats a gift to a spouse where there may be a clause that it is subject to remarriage or divorce. In the latter event it is not regarded as being an indefeasible gift and, therefore, the exemption does not apply. It may well be that in many of those cases that if there is a divorce there is never a remarriage. So, the question was: Surely, there must be some way of rationalizing that. They said that as a practical matter they had not found it yet, and they mentioned all the considerations, and they said they would have a look at it again.

Then, there was the variation of wills and trusts after the death of the settlor or the testator. The Bar Association was referring here to where you have variations under the

Variations of Trusts Act in Ontario, and where the courts sometimes, after the death of the testator, will make variations in the will. The question is whether the will as varied is the will which is dealt with by the department, or whether it is the will as originally made by the testator.

The Bar has suggested that these areas of variation being recognized should be a permanent thing rather than as it is presently in the bill where such variations will only be recognized in cases of persons dying before August 1, 1969. The feeling of some of the members of the committee, and also of the Bar Association, was that this should be a permanent feature.

Hon. Mr. Benson: You have covered quite a few points there, senator, including the quick turnover of wives where you get divided estates. This, of course, involves three deaths from the time the legislation is enacted. It is something that we will certainly look at.

With respect to the remarriage clause I personally think that a trust which is revocable on remarriage of the wife or the widow should not be recognized under the Estate Tax Act. I think that we as individuals and as legislators should not encourage people to live in sin, which is really what you are doing if you are putting the cancellation of benefit in the case of the remarriage of a widow into a will. I would like to say that I personally do not believe in this, and I think that wills should ultimately be changed so that wives or husbands are not penalized in this regard.

Senator Aseltine: Hear, hear.

Hon. Mr. Benson: You know, my wife might die and leave me some money, and I would hate her to say that if I remarried somebody else I would lose it.

The Chairman: There is nothing like a personal example.

Hon. Mr. Benson: The other items with regard to the two estates ending up in the same hands, and the problems arising there—I certainly promise we shall have to look at this. They are not problems that will happen very quickly, because this would require three deaths for it to happen. We shall have ample time to look at this, and it certainly will be looked at.

Senator Connolly (Ottawa West): That is keeping the Government out of the dining rooms, really, is it not?

The Chairman: There was one item in respect to which the departmental officials said they did not agree with the proposals. I am referring to the proposals by the Canadian Bar Association in connection with the protection of dependent children in the circumstances where a life interest goes to the wife, and where there is a loss of exemption if the trustee is empowered under the will to pay income or capital to the dependant children. I would say that the position of your officials was that they were not prepared to agree that there should be any change in that.

Hon. Mr. Benson: This would be a method of dissipating the estate.

The Chairman: It could come to that, yes.

Hon. Mr. Benson: Yes, and really it could defeat the purposes of the changes in the act, whereby the widow or widower escapes duty free, and the additional taxes are paid when it passes on to the next generation.

The Chairman: There would be nothing to prevent the widow from using the proceeds of the life interest, for instance, to maintain the children.

Hon. Mr. Benson: No.

The Chairman: If the amount she paid in a year exceeded the exemption there might be a question as to whether this would be held to be a gift or not.

Hon. Mr. Benson: I do not believe we have ever deemed funds for the maintenance of children to be gifts to the children. In fact, when we were drafting the legislation I was worried about situations where somebody had children who are attending university, the expenses of which might well exceed the \$2,000. I received an assurance from the Department of National Revenue that such cases of maintenance of children were never deemed to be gifts to the children. So, I have these assurances, and this is what the law is based on.

Senator Connolly (Ottawa West): May I ask the minister a question based on that point? I gather that the Income Tax Act pretty well restricts it to university fees, does it not?

Hon. Mr. Benson: With respect to the Income Tax Act, the deduction is on the part of the person on whose behalf the fees are paid. He is the only person who can deduct the fees. But, in cases where people send their sons or daughters abroad to expensive

schools—perhaps to Switzerland for graduate studies, or to France—then I am informed that this kind of maintenance has never been deemed to be a gift to the child. Therefore, I did not think we had to complicate the law by writing anything like this into it, because we have assurance of that interpretation from the Department of National Revenue.

The Chairman: A point that I asked the departmental officers to consider further, is the question of the loss of foreign tax credit where the husband's estate is deemed to pass on the wife's death. Mr. Brown, in discussing that, said that he really did not know how to deal with it at this time, and the big problem was as to what rate should apply because it might well break either way. But, he said he was going to look into it further. Have you any comment to make on that?

Hon. Mr. Benson: No, but we will continue to study this matter and try to work something out. There will have to be a little settling down in this law. We are particularly interested to see what the provinces are going to do in respect of their succession duties. Indeed, the large amount of death duties that is paid by the people of Canada is paid to the provinces, either through our act or directly in the three provinces of Ontario, British Columbia and Quebec through succession duty statutes of those provinces. I hope there will be a shaking down of the law so that we get relatively the same law in the jurisdictions which impose their own succession duties. Indeed, the Treasurer of Ontario indicated in his budget that he was willing to co-operate fully in this regard. In Quebec, in their recent budget, they took steps which were to some extent a movement in the direction of the estate taxes we have at present. I think we shall have to have continuing consultations with them to try to work out a law that is relatively the same across the country. At least, I would like to see this happen.

The Chairman: Reverting to the question of the protection of dependent children, one of the situations that has to be envisaged is the possibility—and the reason why you might prefer to make use of a trustee and give him the responsibility of dealing with the money—of running into an irresponsible wife or an irresponsible husband. Therefore, the use of a trustee might be a protective device. I was going to say the department flatly refused, but they did not appear to be ready to entertain any consideration of this. I think

there is an element there that should be looked at.

Hon. Mr. Benson: I have checked with Mr. Brown, and he said such a provision in a will could be made separate from the trust entrusting funds for the benefit of the wife, and this would protect the child.

The Chairman: Yes, I suppose to some extent that could be. It is separate and apart from the life interest or the outright gift to the wife.

Hon. Mr. Benson: Yes.

The Chairman: This would be something that a testator could do now, without the aid of this bill.

Hon. Mr. Benson: Yes.

The Chairman: The question is whether in achieving that there are two ways in which to proceed: leave the income to the widow of a spouse with a direction to pay certain amounts for the dependent children, or simply leave a life interest for less than the full amount of the estate to the spouse and separately provide for the support of the children. In the latter case you do not get any exemption, whereas by using the vehicle of the spouse it would be part of the exemption.

Hon. Mr. Benson: Of the total exemptions of the spouse. One of the things I think you will find as a result of the new estate tax—and undoubtedly the members of the committee will have thought of it—it is the splitting of the larger estates. You will find half the estate is left to the wife and half to the children, and the wife's is passed on to the children. I know you can make calculations showing that this is most beneficial, certainly when you get to the larger estates.

The Chairman: There are many variations, because the donor spouse can gift and the donee spouse can gift, and there can be a combination of those; you can multiply certain exemptions twice.

Hon. Mr. Benson: Sure. If you have \$4,000 per child for a 20-year period it means \$80,000 for each child.

The Chairman: The problem with small estates still today is that there just is not enough money. What they have made might be tied up in physical assets and there is not the ability to make use of the dollar exemption.

Hon. Mr. Benson: No, except through the transfer of a debt.

The Chairman: Yes, you can do that. These were the items we discussed particularly. There were certain items that fell in the category of policy matters that we thought it proper to be put before you. Senator Phillips (Rigaud) raised one in relation to Quebec and I was going to ask him if he would make a short statement on that.

Senator Phillips (Rigaud): Mr. Minister, you may be aware of the fact that I did raise the issue that in the Province of Quebec, under Article 1265 of our Civil Code, as you well know, gifts between spouses are prohibited other than those covered by marriage contract. In the nature of cases, the amounts given under marriage contracts was limited and is limited. I was then told that the federal Government was hoping that the legislation the provincial government was considering with respect to changes in the law covering the marital status in the Province of Quebec would eliminate the objection I had raised. I made inquiries with respect thereto, and I have before me a bill called Bill 10, described as an act respecting matrimonial regimes. Up to my departure from Montreal yesterday I was advised by the Bar Association of our province that at the moment this bill is not being proceeded with because the subject matter covered is in respect of those aspects of matrimonial status reflected in the Civil Code. Therefore, there is no likelihood that there will be relief with respect to the exemptions of gifts between spouses.

Under the circumstances, we in our great province find ourselves—using the word in a very respectful sense—we believe, discriminated against, in that the high rates of gift tax presently provided and their co-relation to the estate tax rates are based, in part at least, upon the views entertained by you and your colleagues that the exemptions of gifts between spouses must be offset by higher rates of tax.

We therefore in the Province of Quebec—and I think I am also speaking on behalf of my honourable colleagues in the Senate with whom I have discussed the matter—feel that in the Province of Quebec we should be entitled the lower rates of taxation—and I am directing myself to gift tax only—in respect of gift tax because of our prohibition on making gifts between spouses. In my observations to my honourable colleagues in the Senate I suggested that the rates of taxation to which

we should be subjected are those that were in force prior to the coming in force of this bill, until such time as the law of the Province of Quebec is able to provide for the exemption between spouses so as to put us in the same position as our fellow citizens in the rest of the country.

Hon. Mr. Benson: First of all, as I understand the situation in the Province of Quebec, there is no prohibition on gifts at time of death and transfer of property. There is no particular advantage for people generally to make a gift to a wife during her lifetime when there can be a tax-free transfer to her on death under our legislation.

Senator Phillips (Rigaud): If I might be permitted, Mr. Minister, I would say the general conception that gifts must always be related to the problem arising on the eve of death is an assumption that I do not, with great respect, feel is justified. The whole conception of making gifts is not necessarily related to gifts between spouses, nor is it related to the problems that arise in respect of the making of wills at death. Let us assume for the sake of argument that we have a situation now in the Province of Quebec where a father can make a gift to a son of \$200,000, in respect of which he is subjected to a maximum rate of 25 per cent. As a result of the new philosophy reflected in this bill, the penalty is introduced of increasing, by way of what I think I described as grim escalation, a rate of taxation for gift taxes, gifts *inter vivos*, of 25 per cent in respect of gifts of \$200,000 going to third persons.

Hon. Mr. Benson: I agree that the gift tax rates have been raised substantially, but I will not agree they have been raised substantially to offset the fact that gifts can be made to wives without paying gift tax. When we decided on transfers to spouses, whether made during the lifetime or on death, it is unfortunate in Quebec they cannot be made during the lifetime, but can still be made on death—this meant that we, of course, had to raise additional amounts of money. This also meant that we increased the rate of estate tax when it passed on to a second generation.

The matter of the gift tax and the changes in the rate was quite a different matter. The gift taxes were not originally introduced as a method of stopping people from avoiding the estate tax, but rather to stop them from avoiding income tax. What we have done with respect to the gift tax is made it relatively

less advantageous to make gifts during lifetime. We have integrated them with the estate tax rates so that we have really gotten rid of a loophole which existed for very large estates, whereby people never transferred things on death, but during the lifetime.

Indeed, I think you will find that what we have done is very similar to proposals in the United States because of a similar loophole, by our introducing the integration of the estate tax and the gift tax rates. This had nothing to do with the fact that we are allowing tax-free gifts to the spouse during her lifetime. It simply was introduced to integrate the estate and gift tax rates so that the loophole which existed, a great loophole for large estates of giving it away, has been closed.

Senator Phillips (Rigaud): Do you not think that under the present circumstances in our country, where gifts can now be made tax-free between husbands and wives in the rest of the country, other than Quebec, it has created a situation which is very discriminatory in respect of residents of the Province of Quebec?

Hon. Mr. Benson: I think it is unfortunate in Quebec and I hope they will change their law in this regard. I do not think it puts people in a worse condition except that they cannot make the gift to the wife in a lifetime. The only thing that exists is that they cannot make the gift to their wives now rather than on their death. That is an unfortunate quirk of the Quebec law. I do not think it is a particular disability, because the gift being made now during lifetime would mean the income from that gift would still be the income from the individual making the gift. There is no particular advantage to making it at any one time.

The other point I was worried about was the making of gifts to children out of the joint property where these could amount to \$4,000 in the rest of Canada. I was concerned it might only mean that in Quebec a gift of \$2,000 per person could be made, but I have been assured that gifts made out of a property which is joint—I forget what you call the common property in Quebec—one gift of \$4,000 would be deemed to be a gift of \$2,000 each from the wife and husband.

I do not think the people in Quebec are in a particularly bad position due to our new law. The quirk that they cannot make gifts during the lifetime to the wife is in the Quebec law. We are hopeful it will be changed,

but it does not create any great disadvantages. There is no great advantage of making the transfer to the wife in the lifetime.

Senator Phillips (Rigaud): If there is no great advantage in making transfers during the lifetime why is it regarded as a major policy that gifts between spouses has been regarded as a current great benefit that the Government is bestowing upon Canadian citizens.

Hon. Mr. Benson: The transfer of property to the spouse, whether by gift during lifetime or death, I think is of great advantage to spouses in the country. Indeed, this has been recognized by the Government of Quebec in the recent proposed changes in their succession duties whereby they are going to allow pension benefits and trusts to be transferred to the wife entirely free of tax. You know the great difficulties I ran into when I was Minister of National Revenue. I think one has to get this in perspective. Only 5 per cent of she had to pay a large amount of estate tax. Among the 5 per cent the difficulties I ran into were when a husband had left a pension. It may be a pretty good pension benefit to the wife. He also left a house and insurance policy. The wife had the house paid for and there was also a small amount of cash from the insurance policy and she had a large amount of pension benefits, particularly if she was younger than her husband. She found that she had to pay a large amount of estate tax and had no cash to pay it. I wanted to correct this situation because I thought it was the most difficult situation that existed with regard to estate tax in the country. In order to keep the revenue relatively even we had to adjust other rates and at the same time we did close the gift loophole which I think should have been done and, indeed, the American Government has proposed exactly the same thing.

Senator Phillips (Rigaud): With the greatest respect, I felt that on occasion we followed policies dissimilar from the American Government and I can only emphasize the objections that I make as a resident of the Province of Quebec. With profound disrespect for you as an individual of course, as head of finance, I find an inherent contradiction in the conception of a major benefit being given by way of spouses in the rest of the country and not giving it to us in the Province of Quebec, because of our law and finding ourselves in the position where we are, in the resultant, being discriminated against. I should have

hoped, in all sincerity, that the Government would consider our position and our plight in that respect and that the relief should come from the national scene rather than awaiting possible relief in the provincial area. If I can only express my opinion. . .

Hon. Mr. Benson: With great respect, senator, I believe, as I have indicated previously, there is no inherent discrimination against the Province of Quebec, because the bequest on death can be made and written into a will immediately and will not attract any federal estate tax. The only thing that cannot be done is the making of the gift during lifetime to the wife, free of gift tax. This would not make any difference from an income tax point of view because if the gift were made during lifetime, the income would still be the income of the donor.

Senator Phillips (Rigaud): No, no. I am not dealing with the subject of the gift being made between husband and wife and the consequent retention for legal purposes of it being deemed to be income on the part of a spouse. I am dealing with the subject matter of escalation of rates resulting from the exemptions that have been given between spouses and the consequence of damage in terms of monetary loss to donors or to others.

We are in the area, I think, where there is a clear difference of opinion and which obviously is apparent. I must confess very frankly that I see no indication of any possibility of relief being granted. I would have hoped that my observations, which have been supported by honourable colleagues in the Senate, would elicit a reply that the subject matter at least would receive careful consideration in the hope that relief would be granted at the first available opportunity.

Hon. Mr. Benson: Well, we certainly will watch what is happening in the Province of Quebec. I would hope that what I consider the relatively minor difficulty of not being able to make the gift to the wife until time of death will ultimately be corrected. I would like to again say that the assumption that the gift tax rates were raised because of the "during life gift to the wife" was not really the reason we amended the gift tax rates at all. It was because we wanted to integrate them with the estate taxes.

The Chairman: There was another point. I was the person who was guilty of raising this one, Mr. Minister. Seeing that we are side by side we each had better be pretty careful.

This was on the basis that the year in which we would be likely to lose or have the greatest decrease in revenue from estate tax because of the exemptions granted would be the first year. Donees, of course, over the years will have a way of dying, as well as donors, and of course then your income gets built up when the donees start dying and you get more revenue. I thought in these circumstances, with the high rates, there should be a period or a trial run of this, whether it is three or four years or what, to study how this trend goes, because if the money comes in excess of what is needed to replenish the loss because of exemptions and that money comes into general revenues, we would want to know what is proposed to be done with it and maybe have some say at some stage as to whether we think it should be done that way or not. That is why I suggested there should be a time limit after which you would have to come to Parliament.

Hon. Mr. Benson: As I have said, I have undertaken to make one change in the Estate Tax Act in the reasonably near future. I would hope to do it in the next session. There will be several things to do, there will be difficulties which will arise in the shape of legislation. At that time, of course, the estate tax will be open for discussion in Parliament, including in the Senate. We will then have some experience as to the amount of revenue that would be involved. The original intention was not to raise any additional revenue in this regard—although this is always a difficult matter, when making changes such as this, under any kind of prediction. When dealing with a matter of \$100 million it is easy to be out 1 per cent, which is a million dollars. I believe the estate tax question should be opened and reviewed within a relatively short period of time, especially in view of the tax reform coming, on which we hope to introduce a White Paper relatively soon. When we have done this for that package, plus the estate tax, we should have a look at it again and I can give an undertaking that we will be looking at it and re-opening the act in the near future, to take care of some of these shaking down conditions.

But, if I might put it further, to put a time limit date on estate tax in legislation would be to bring in a wrong principle, because you know the difficulty of getting legislation in and getting some recognition for dates and so on. In any parliament, that it is very difficult.

The Chairman: Be that as it may, you will have a look at it, and may be that the force of the experience and the pressures will be such that you will just have to look at it, from outside pressures.

Hon. Mr. Benson: Yes.

The Chairman: If you are stimulating revenues, by reason of the higher rates, they may be much larger than you estimate. I notice you used the word "aim" of the higher rates, it was to recover what you were getting. What happens if it should turn out that you are getting considerably more than you could use? I noticed your use of the word "exactly" and it indicated to me that there has been some reasonably well done calculation of what you are likely to use. Otherwise, knowing you as I do, you certainly would not have used the word "exactly".

Hon. Mr. Benson: In using the word "exactly", it was to be exact according to the predictions which we could make, which are necessarily subjective. I found that a few changes in some factors can make a great change in revenue, especially at the federal level. I found that 1 per cent change in the gross national product in a year could throw out the estimates with respect to revenue for the year.

The Chairman: May I restate one statement that you made, as I understood it, that is, in the area of interpretation? When certain objections were made, or submissions for changes to reflect certain conditions, the answer was that, according to the departmental officials, "the bill does that now". Then it becomes a matter of interpretation in the department. I understood you to say, I think, that in that area there would be no change administratively in the application of the sections and that there would be no application of a principle which was at variance with the statements made by your representatives here?

Hon. Mr. Benson: That is right.

The Chairman: And that if it should be necessary to make it statutory, in order to make the assurance complete, that would be done.

Hon. Mr. Benson: That is right. If my officials, or the officials of National Revenue, gave an interpretation of the statute here, and the way it will be administered, the Government will back those interpretations.

The Chairman: There is something else I wanted to ask you. In calculating the purpose of the increase in rates, I noticed in looking at the Federal-Provincial Fiscal Arrangements Act of 1967, that payments to the provinces in relation to succession duties are on a percentage basis, so that, strictly speaking, there is not an obligation on the federal authority to contribute a certain amount in dollars, it is a percentage of the amounts you collect under your particular estate tax, having regard to all the exemptions and abatement payments.

It strikes me that, if you have to replace \$45 million which would be the losses in the first year by reason of the exemptions, the share the federal authority will keep will be of the order of \$12 million. It is a lot of fluff and feathers to get \$12 million and I wondered whether the Government felt there was an inherent obligation not to reduce the dollar amount of the payments, or what it was that made it so important to impose about \$33 million extra in taxes solely to be able to hand that amount over to the provinces.

Hon. Mr. Benson: I am not sure that there will be \$45 million in additional revenue. I do not think this will be the case. I think the exemptions granted the wives and dependent children will offset the increased revenue. At least, this ...

The Chairman: Let us assume it balances out.

Hon. Mr. Benson: The reason for doing this was, on our part, the principle that we felt the estate tax, as it was presently levied, was very unfair to the unit of husband and wife and also unfair with respect to any areas where there were dependent children or disabled children. It was our aim to correct this situation, the situation where husband and wife had not been regarded as equal partners in the past; and perhaps in some way to recognize rights of women and their contribution towards the family fortunes, by making this transfer.

Again, I would like to stress that when I was Minister of National Revenue, these were the worst cases I ran into—where a wife was left with young children, and the husband had been somewhat older, and all she had was the pension and his insurance policy. We wanted to correct this situation and, in order not to affect substantially the revenue of the provinces we of course adjusted other rates to make up for that. Quite aside from that we

did plug the loophole of gifts, which some people disagreed with.

The Chairman: That plugging may reduce your revenue from that source.

Hon. Mr. Benson: From gift taxes?

The Chairman: Yes.

Hon. Mr. Benson: But we will get it on the other side.

Senator Molson: In view of the trend in the provinces to leave this field of succession duties cases—in their case it means the less to them—was this not an appropriate moment for the federal Government to consider moving in the same direction?

Hon. Mr. Benson: These are provinces to which the tax has made a less important contribution; the provinces which did not collect very much in estate taxes or succession duties. I think the major taxes are paid in three provinces, provinces that have their own succession duties. This is where the major amounts are collected. I have not seen any drastic action in those provinces to do any more than we have done in our estate tax.

Senator Molson: It may be migration, like that to Nassau now, Mr. Minister?

Hon. Mr. Benson: This is always possible. Some people will move estates from place to place to avoid estate tax. This danger we have faced in the past.

Senator Molson: I think it is one of the world problems. It is well known that the people with really large estates, really rich people, can do this, and they do it. There are examples every year. They are not the ones we are worrying about. The class of people that seems to have been giving most concern is the successful businessman or farmer who has accumulated what we would call a modest estate. That, I think, is causing a lot of concern in the country, as he must be the one in the middle.

Hon. Mr. Benson: I think there is a question there, a philosophical question, with regard to estate taxes *per se*. I made a philosophical speech in this regard once, having to do with when they were first instituted in Rome and the fact that the only reason they were instituted being because there was a threat to increase the property tax and the people in the Senate at that time were the

only people in the country really paying the major property tax so that the estate tax was put in instead.

I think the estate tax has justification in that it exists in all western countries and is one of the two taxes that we have that are progressive. It and the income tax are the only two taxes we have that are based on one's ability to pay. If you look at the excise tax, for instance, you will see that that is based on what one consumes.

The Chairman: Such taxes are impersonal.

Hon. Mr. Benson: Yes, that is right.

Senator Beaubien: Mr. Minister, to go back to the gift tax, suppose a couple had five children and the wife had no money. In a province other than Quebec that husband could give his wife some money and they could both then give \$2,000 to each child per year, which would be \$10,000 per year each, for a total of \$20,000. However, in the province of Quebec the situation would not be the same for the same couple, because, if the wife had no money, the husband could not give his wife any money and they could only give \$10,000 between them per year. Is that not right?

Hon. Mr. Benson: If it is under joint property in Quebec...

Senator Beaubien: If they are not common as to property, I mean, and there are a lot of couples in Quebec who are not common as to property.

Hon. Mr. Benson: Then, if they are not common as to property, they are limited as to the husband's gifts to the wife. If they are common as to property, the husband may give \$4,000 a year to the children and it would be deemed to have come \$2,000 from the wife and \$2,000 from the husband.

But they are in difficulty and I agree that there is a necessity for changes in the laws in the province of Quebec, although who am I to advise them?

Senator Beaubien: The majority of married people in Quebec are not common as to property, because they use the Gift Act before marriage and in order to do that they have to be separate as to property. So the big majority are not. We are talking about the majority of people who could give any money at all, and they would be separate as to property. Therefore, instead of being able to give the children \$20,000 a year that same couple could only give them \$10,000.

Hon. Mr. Benson: That is right. That is, if the wife had nothing.

Senator Beaubien: A lot of wives have nothing. It is not an isolated case.

Hon. Mr. Benson: I hope this is something that can be cleared up. There was an advantage in Quebec before the changes in the estate tax under the old gift tax exemption, where it used to be 50 per cent of the previous year's income after tax. The only tax deducted in the province of Quebec used to be the federal tax so that the amount that could be given by a person in a particular year was higher in Quebec than in other provinces.

Senator Phillips (Rigaud): That is only communal property and, as a Quebecer, I can assure you that the number of cases is extremely limited.

Senator Croll: Now that the point has arisen, that was the question I had in mind. How is it that over all these years you discriminated against me in the province of Ontario as against what Senator Phillips (Rigaud) now mentions, without doing anything about it?

The Chairman: You were not vocal enough.

Hon. Mr. Benson: It was because I thought you did not have enough money to give away.

Senator Leonard: If that is what you thought, you were very wrong.

The Chairman: Mr. Minister, we heard the Canadian Construction Association; they were very interesting in their presentation, very serious and very emotional, and they have a real problem. The question is whether the right to make instalment payments over a period of six years, paying the going rate of interest, is adequate to enable them to finance these businesses. I know from personal experience in my own office that three businesses in the last six months, where the owners are getting older, have been faced with this situation and they have sold out. In one case it was an American; the other two cases were other Canadians who purchased. But they could not wait to face the situation with everything in bricks and mortar and what the realization would be in order to meet these payments. Now, that is not necessarily a new problem, but with the increase in rates it becomes a greater problem. That is all.

Hon. Mr. Benson: Yes, I think the problem of payment of estate taxes, where the assets

are not liquid, has been and will continue to be a problem. With the changes in rates, when it is passed on to a second generation, the problem perhaps is increased presently with very large estates. With the smaller estates, and for estates where there are several children, the problem is no greater than it was before, but here again it is a question of whether or not, when people have accumulated sums of money or wealth, it should be taxed on their death when it passes on to their heirs who may or may not have contributed towards the accumulation of this wealth. Indeed, in many cases they have contributed towards it.

There are steps that can be taken in a construction firm or any business, as you know, in order to protect one's position. Indeed, making transfers to children through the payment of salaries sufficient to buy interests in the firm and making gifts and this kind of planning has to go on, but it is of course a problem where a firm is passing on from generation to generation in the same family.

The Chairman: The problem is that they have everything but money. They have assets; they are making substantial earnings and the machinery and equipment is wearing out so that there is a constant re-investment of funds; in other words, the percentage of retained earnings is very substantial and, yes, they may make a good living out of it, but, when you have to face Mr. Tax Man, it is a real problem.

Hon. Mr. Benson: Oh, yes, and this problem is also accentuated by the creation of surpluses within privately-held corporations which have to be distributed, which is a problem we have been studying and has been studied for a good long time by the federal Government. It is a problem that arose during the question of tax reform and has been among a great many other things, the subject of much study.

The Chairman: I assume, and rightly so I would think, that there was considerable attention given to this question. Was there any rationalization on any methods, or were any methods proposed by which this burden could be corrected?

Hon. Mr. Benson: One can propose methods, yes. If one wanted to protect assets passing within a family one could say that so long as the assets stayed in that family over the generations it would not be subject to

estate tax. I do not think you could limit it to a particular type of business. But this type of legislation has been discarded in the western world as allowing large accumulations of wealth to grow larger and larger so long as they remain within the family.

The Chairman: You could overcome that by establishing a ceiling.

Hon. Mr. Benson: Or a floor, yes. We, in effect, have a floor now in that only 5 per cent of all Canadians who die pay an estate tax, that is, with the exemptions we have.

The Chairman: We are thinking of the cases of those who will be subject and are subject in relation to small businesses and how the burden can be lessened, because it is a real burden and is going to lead to all kinds of situations. Selling out of businesses will certainly be one of them and the breaking up of family companies. Maybe that is good; I do not know in the long run.

Hon. Mr. Benson: I do not really know either, and the evidence we have had has not been conclusive that this was in very many cases the sole reason for the sale of a business. It has been something that I have been looking at for a long time. I do not think that there has been any conclusive evidence in spite of what the Ontario Economic Council said that this is the major reason for the selling of many businesses.

The Chairman: If you had heard the representatives of the Canadian Construction Association, when they cited chapter and verse of their membership, you would realize that for them and for a great number of them and their families it is a major problem. It is a major problem where they have operated for a lifetime or maybe two lifetimes and have faced this situation and where their pride has made them keep going and keep up their equipment and their earnings. Then they have to meet the problem of how they are going to finance the estate tax. It seems to me that the only alternative would be to find some way of prolonging their lives.

Hon. Mr. Benson: Or in planning their estates. You, senator, and members of the legal profession here have had more experience of this than I have had, but you know there are ways of planning estates so that one can ease estate tax burdens, and I am sure members of the Construction Association have competent people advising them in this regard.

The Chairman: That is quite true, but you know how people approach this question of their estates, and most of them are now approaching it earlier. Most people simply go to a lawyer and say "draw me a will" and he draws it and he signs it and then forgets about it without realizing the problems that are going to be involved.

Senator Walker: Mr. Minister, in view of the tremendous objections which have been raised and which you are handling very well, and I compliment you on your handling of them, and further in view of the fact that you are bringing down a White Paper and a composite bill in the fall would you not consider scrapping this at the present time and including it.

Hon. Mr. Benson: No.

The Chairman: Well, it is not necessary to scrap this in order to include it in the new bill.

Senator Walker: No, but there are so many objections and so many things to be varied, and in view of the fact that the Minister has allowed an estate to take either of the alternatives up to August next, would there be any harm in doing what I suggest other than the delay in cleaning up the estates? Why could you not just draw a new bill ironing out the difficulties.

Hon. Mr. Benson: Mainly because there was a matter of principle involved. We want to recognize the fact of the equality of women in this country.

Senator Walker: We wanted that for a hundred years and six months' delay is hardly likely to do any harm.

Senator Phillips (Rigaud): I have a question to ask the Minister. In connection with small businesses and the like I raised the point that it might be desirable in arriving at the rates of taxation to draw a distinction between assets that are liquid and those that are not, on the theory not that a mere delay be given but that there is a clear distinction to be drawn between an estate that has $\frac{1}{4}$ million dollars in cash and securities and one that has $\frac{1}{4}$ million dollars in plant, machinery, inventory and accumulated debt. I wonder if you would be responsive, Mr. Minister, to the suggestion that in due course an amendment to this effect, which would be one of a fundamental nature, be brought in because by doing so one would be alleviating the problem which has

been experienced and which has been presented to this committee.

Hon. Mr. Benson: We did look at this particular problem and indeed this is one of the reasons we introduced the instalment payments. If one were to treat different kinds of estates in a different manner I think a \$1 million estate which is principally in bonds would pretty soon become a \$1 million estate which is principally in real estate if there were a substantial difference in the estate tax payable on the two. We have recognized that there should be provision for making payments over an extending period of time, and we have written it into the law for the first time. It is something that people have asked for a long time. That kind of distinction can be made without making any material shift in the type of assets that people hold.

Senator Phillips (Rigaud): I must say that when you were Minister of National Revenue we did not need any extended periods of time for payment because you were extremely warm-hearted in extending time.

The Chairman: I think this brings us back to the situation in Ontario a number of years ago when there was quite an active trade in succession duty-free bonds and real estate, and we might get into that category if there was a lower rate of tax. People in anticipation of death might put their money into real estate and then the family after the death might be rather busy getting back the money. If a number of people died at the same time they would not be able to move the estates around fast enough.

Senator Willis: Mr. Minister, I know this is not in your department but are estates in Toronto and Hamilton being held up until this bill has been passed? I have three estates at the present time where I cannot get a word out of the succession duty people in Toronto. Consequently they are hanging fire and are creating problems for lawyers who are all blaming me because I cannot get them through. They think it is because I am a Conservative.

Hon. Mr. Benson: It really is not because you are a Conservative. It is true that estates are being held up and that is why I would urge the honourable members of the Senate to deal with this legislation as expeditiously as they possibly can.

The Chairman: I have one more question; would you consider extending the time for

election to take the old or the new exemptions whichever would be the more beneficial beyond August 1st?

Hon. Mr. Benson: No, I would not like to do that. There was no intention of doing this in the first place, and the reason why we did it was because of the indefiniteness of the law. I think we forced people for the first time to think about their estates. We have had to face a great deal of criticism because a great many people in Canada did not know that estate tax existed until this came up but now this has caused people to look again at the matter of their estates and consider what is involved, but I believe that by August these will be cleared up.

Senator Leonard: Mr. Chairman, the Minister has given us some very helpful and very important undertakings today with respect to possible amendments in due course and with respect to the interpretation of some doubtful or difficult parts of the bill. These undertakings are of very great importance not only to us here in our position as legislators but also to the people throughout Canada. Now we have heard these undertakings from the Minister and in the normal course we might very well ask that those undertakings be put into amendments to the bill as soon as possible and that the legislation be held up until that is done. However, I for one am prepared to accept the undertakings and in the light of that fact and of the legislative program and of the uncertainty in the meantime to accept those undertakings instead of amendments to the statute. However, it is all very well for us to have these undertakings here but we must remember there are lawyers throughout the entire country, chartered accountants and testators who are dealing with these problems day in day out. For that reason I think the proceedings of this committee meeting should be printed in large numbers, far more than the normal printing. There might have to be some other means of communicating this type of information as well. This is the point I want to make. Of course this a matter for ourselves to decide, but we ought to make sure that these undertakings receive as wide-spread publicity as possible.

Hon. Mr. Benson: I would agree, senator, that this is very important and I certainly would not be adverse to having people in my department summarize the undertakings they have made and which I have backed up this afternoon, without reading them word for

word, but I have discussed them with the people who made them.

The Chairman: Are there any other questions?

Senator Macnaughton: And you will bring them to the attention of the different professional societies, at least?

Hon. Mr. Benson: I would not mind issuing a summary and making it available to anyone who wishes it.

The Chairman: Any other questions? Are you ready to deal with the bill?

Senator Croll: I move that we report the bill without amendment.

Senator Beaubien: No. Other people are coming, are they not?

The Chairman: No, we have no other witnesses to hear.

Senator Croll: I move that the bill be adopted.

The Chairman: There is a motion to report the bill without amendment, but this is for the committee to decide.

Senator Giguère: I will second it.

Senator Leonard: I said I am prepared to accept the minister's undertaking. At the same time, I think probably this is the kind of matter we should discuss among ourselves, and we are here today, tomorrow and next week. I do not think we should leave it any longer than that, but I think perhaps we should make that decision among ourselves.

The Chairman: Mr. Minister, thank you very much.

Senator Flynn: Just before the minister leaves: How long does the minister think it would take to bring in those amendments?

Hon. Mr. Benson: I would hope to have a review of the legislation by next fall, so if there is cleaning up to be done in the legislation we would do it in the coming session.

Senator Flynn: Would these amendments be retroactive?

Hon. Mr. Benson: I have said that the major amendment, the one question, the charitable donation question, I would hold people protected in the interim through the use of section 22 of the Financial Administration Act.

The Chairman: And on the matters of interpretation?

Hon. Mr. Benson: And on the matters of interpretation I will back my officials, and they will assess that way, I hope.

Senator Leonard: Might I make another remark? I really thought that before going on to another matter we should amend our order of printing of today's proceedings. I have forgotten what the number originally agreed upon was.

The Chairman: The number is 800 in English and 300 in French.

Senator Leonard: I think every lawyer in Canada and every member would want a copy. I think we ought to think in terms of...

Senator Walker: The authoritative statement will be the summary the minister is going to issue at once under his own name from his own office.

Senator Leonard: The statement to be issued by the minister is not the same as that statement that comes out of the proceedings of this meeting.

Senator Walker: It will be better.

The Chairman: I think you need both the minister's statement and the statement of this meeting.

Upon motion, it was *resolved* that 4,000 copies in English and 1,500 copies in French of the proceedings be printed.

The Chairman: On the other question, we have not any more evidence, there are not any more submissions. I suppose we are as well informed now as we would be at any

stage. We have the minister's undertakings, and also that the review of the legislation will take place in the next session, next fall, so there will be an opportunity to deal with this matter again at that time. It is not as though we are closing the door on ourselves for all time. In those circumstances, is the committee now prepared to approve the reporting of the bill without amendment?

Senator Beaubien: Why do we not put it over until next week?

The Chairman: We are not sitting next week.

Senator Croll: I move that the bill be reported without amendment.

The Chairman: Is that unanimous?

Senator Flynn: No.

Some Hon. Senators: No.

Senator Flynn: On division.

The Chairman: On division?

Some Hon. Senators: On division.

The Chairman: Without a show of hands?

Senator Walker: Whatever you like.

Senator Beaubien: Why not have a show of hands?

The Chairman: All right. Those in favour of reporting the bill without amendment? Contrary? I declare the motion carried by a vote of nine in favour and seven contrary. I shall report the bill without amendment.

The committee proceeded to the next order of business.



First Session—Twenty-eighth Parliament
1968-69

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE
ON
BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 42

WEDNESDAY, MAY 21st, 1969

First Proceedings on Bill C-102,

intituled:

"An Act to amend the Patent Act, the Trade Marks Act
and the Food and Drugs Act".

WITNESSES:

Department of Consumer and Corporate Affairs: The Honourable Ronald Basford, Minister; J. E. Grandy, Deputy Minister; A. M. Laidlaw, Q.C., Commissioner of Patents and R. M. Davidson, Director, Merger and Monopoly Division, Combines Investigation Branch.

Department of National Health and Welfare: Dr. R. A. Chapman, Director General, Food and Drug Directorate.

University of Toronto: F. Norman Hughes, Dean, Faculty of Pharmacy; J. K. W. Ferguson, Director, Connaught Medical Research Laboratories; George F. Wright, Professor of Chemistry and G. C. Walker, Professor of Chemistry.

University of British Columbia: Professor Marvin Darrach, Head, Faculty of Medicine; Professor M. Pernarowski, Faculty of Pharmaceutical Sciences and Denys K. Ford, M.D., Department of Medicine, Vancouver General Hospital.

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Leonard
Aseltine	Desruisseaux	Macnaughton
Beaubien	Gélinas	Molson
Benidickson	Giguère	Phillips (<i>Rigaud</i>)
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Isnor	Welch
Connolly (<i>Ottawa West</i>)	Kinley	White
Cook	Lang	Willis—(30)

Ex officio members: Flynn and Martin

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, April 30th, 1969:

"The Order of the Day being read,

With leave of the Senate,

The Honourable Senator Lang resumed the debate on the motion of the Honourable Senator Lang, seconded by the Honourable Senator Cook, for the second reading of the Bill C-102, intituled: "An Act to amend the Patent Act, the Trade Marks Act and the Food and Drugs Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Lang moved, seconded by the Honourable Senator Davey, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, May 21st, 1969.

(46)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met this day at 9.30 a.m. to consider:

Bill C-102, "An Act to amend the Patent Act, the Trade Marks Act and the Food and Drugs Act".

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien, Benidickson, Blois, Carter, Choquette, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Giguere, Hollett, Isnor, Kinley, Lang, Leonard, Macnaughton, Molson, Phillips (*Rigaud*), Thorvaldson, Walker, White and Willis. (24)

Present, but not of the Committee: The Honourable Senators Dessureault, Grosart, Macdonald (*Cape Breton*), McDonald, McLean, Methot, Paterson and Sullivan. (8)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The following witnesses were heard:

Department of Consumer and Corporate Affairs:

The Honourable Ronald Basford, Minister.

J. F. Grandy, Deputy Minister.

A. M. Laidlaw, Q.C., Commissioner of Patents.

R. M. Davidson, Director, Merger and Monopoly Division, Combines and Investigation Branch.

Department of National Health and Welfare:

Dr. R. A. Chapman, Director General, Food and Drug Directorate.

University of Toronto:

J. K. W. Ferguson, Director, Connaught Medical Research Laboratories.

F. Norman Hughes, Dean, Faculty of Pharmacy.

George F. Wright, Professor of Chemistry.

G. C. Walker, Professor of Chemistry.

University of British Columbia:

Professor Marvin Darrach, Head, Faculty of Medicine.

M. Pernarowski, Professor, Faculty of Pharmaceutical Sciences.

Denys K. Ford, M.D., Department of Medicine, Vancouver General Hospital.

At 12.55 p.m. the Committee deferred further consideration of the said Bill until later this day.

At 4.00 p.m. the Committee *resumed* consideration of Bill C-102.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien, Benidickson, Carter, Choquette, Cook, Croll, Desruisseaux, Giguere, Hollett, Isnor, Kinley, Leonard, Macnaughton, Molson, Walker, White and Willis. (19)

Present, but not of the Committee: The Honourable Senator Sullivan. (1)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Mr. Basford was again heard.

At 4.55 p.m. the Committee deferred further consideration of Bill C-102 and thereupon adjourned.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

**THE STANDING SENATE COMMITTEE ON BANKING,
TRADE AND COMMERCE
EVIDENCE**

Ottawa, Wednesday, May 21, 1969

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-102, to amend the Patent Act, the Trade Marks Act and the Food and Drugs Act, met this day at 9.45 a.m. to give consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

Upon motion, it was *resolved* that a verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 copies in French be printed.

The Chairman: Honourable senators, Bill C-102 was dealt with by Senator Lang in the Senate. It is an act to amend the Patent Act, the Trade Marks Act and the Food and Drugs Act. You will recall from the explanation that certain immunities are granted to people who may otherwise be in infringement of trade marks and patent rights.

We have here this morning the Minister and a very excellent panel in support, including Mr. J. F. Grandy, Deputy Minister, Mr. A. M. Laidlaw, Q.C., Commissioner of Patents, Mr. R. M. Davidson, Director, Merger and Monopoly Division, Combines and Investigation Branch, and Mr. F. N. McLeod, Legal Division, Combines Investigation Branch.

Dr. R. A. Chapman, Director General, Food and Drug Directorate, is also here, and in addition we have seven or eight outstanding medical men who wish to be heard in connection with this bill.

The order of procedure that I was going to suggest is that we should have an opening statement from the Minister defining the purposes and the scope of the bill followed by whatever questioning may be desired and then, since transportation is still a problem, I thought we should hear the doctors, after which we could get back to a consideration of the bill, section by section, or in whatever manner the committee wishes to deal with it.

One other matter I want to bring to your attention is that all those bills dealing with amendments to the British and Canadian Insurance Companies Act and the Foreign Insurance Companies Act, the Trust Companies Act and the Loan Companies Act were all referred to committee last night. The representatives of the life companies and trust companies are here today, and I was going to suggest that, since it is expected that we will be sitting all day owing to the amount of work we have to do, when we resume after lunch, no matter at what stage we are, we would then intervene to deal with these bills. Mr. Humphrys will be here. I do not think it will take very long, because this is one occasion where everybody seems to be in support of the bills. If anything is left to be done on Bill C-102 after that, we will then resume. The intention is to go on this afternoon until we finish all the work. Is that program as tentatively suggested all right?

Hon. Senators: Agreed.

The Chairman: Mr. Basford, the floor is yours.

Hon. Ronald Basford, Minister of Consumer and Corporate Affairs: Mr. Chairman, honourable senators, I appreciate the courtesy of honourable senators in permitting me to make an opening statement on Bill C-102. I plan to be brief, particularly in the light of the excellent exposition of the objectives and the mechanics of the proposed legislation already given to the Senate by the sponsor of the bill, Senator Lang. However, I would like again to remind honourable senators that there are five points to the Government program to drug prices.

First was the removal of the sales tax on prescription drugs, the reduction of customs duty on these products from 20 to 15 per cent, and the narrowing of the application of dumping duty to drug imports.

Secondly, there was the introduction of this bill.

Thirdly, there was the development of a drug information service to doctors, which was a recommendation of the Harley Committee and which is now being proceeded with by the Food and Drug Directorate.

The fourth step in the over-all program was the Pharmaceutical Industries Development Assistance program known as PIDA. This is now operating and loans are being made to small Canadian drug firms to strengthen and improve the efficiency of this sector of the pharmaceutical industry which manufactures and sells prescription drugs at lower prices.

The fifth and final step in this program involves discussions with the provinces designed to tackle the problem of the high cost of retail distribution of drugs, which, of course, is primarily a provincial concern.

It is the government's expectation as well as mine that the effect of Bill C-102 will be substantially to increase price competition in the Canadian drug industry. This will occur in three ways. In the first place, we anticipate that some at least of the larger drug companies which operate on an international scale will themselves seek compulsory licences to supply drugs in competition with the present patent owners. We know of at least one large drug company which intends to seek such compulsory licences if Bill C-102 is passed by Parliament.

In the second place, we expect that compulsory licences will be sought by the smaller Canadian-owned companies who are being strengthened by the PIDA program and whose marketing strategy involves a low-price policy. The extent to which these smaller companies will have an impact on the general level of prices depends primarily upon how much confidence physicians have in their products—without confidence they will not prescribe them—and this emphasizes the importance of the information service being developed by the Food and Drug Directorate.

In the third place, where drugs in dosage form are available in other markets at substantially lower prices than they are in Canada, the amendment to the Trade Marks Act will permit the importation from abroad of such drugs properly trade-marked by the parent companies of Canadian subsidiaries.

There are at least three distinguishable segments of the Canadian drug industry and it may be desirable briefly to consider the

impact which Bill C-102 is likely to have on each of them. The segments to which I refer are first, the two or three firms in Canada who manufacture the active pharmaceutical ingredients in the form of fine chemicals; second, the much larger group of international companies operating in Canada through subsidiaries, who are engaged in the preparation of dosage forms rather than the manufacture of fine chemicals and who, with the exception of three or four companies, do no substantial research in Canada; and third, the large number of small, exclusively Canadian companies who similarly are engaged only in the manufacture of dosage forms and who likewise do no substantial research.

Before looking at each of these segments however, I would like to make one general comment about the drug industry. That comment is this. It is important to recognize that not all prescription drugs are patented. I say this is important because it is in the area of prescription drugs particularly where the problem of high prices arises. The reason for this is that it is only in the case of prescription drugs that the person who must pay for the products, that is, the patient, has no discretion in choosing the drug, which is prescribed for him by the doctor, and, therefore, is unable to shop for a cheaper alternative.

At the outset therefore, I have two points to make about the impact of Bill C-102 on the Canadian drug industry. First, a substantial proportion of total production is accounted for by non-prescription drugs which are already in open competition with each other, in the sense that the consumer is himself free to choose among them. This group is unlikely to be significantly affected by Bill C-102. Second, a substantial proportion of prescription drugs are not patented and therefore will not be affected by the patent amendment though, if their prices are out of line, they will be affected by the trade marks amendment.

With regard to the small sector of the industry which manufactures fine chemicals in Canada, it is possible that the patent amendment, by permitting compulsory licences to import both fine chemicals and finished dosage forms, will reduce to some extent the business which it has hitherto enjoyed. However, this small segment currently supplies only 15 per cent of the fine chemicals used by the Canadian drug industry. In other words, 85 per cent of Canada's consumption of fine pharmaceutical chemicals is imported now. In addition, it should be

noted that this sector of the industry will continue to receive tariff protection of 15 per cent. Tariff protection is of course the only form of protection against imports that most industries enjoy.

With regard to the large companies who are primarily engaged in manufacturing dosage forms and only a small minority of whom do any substantial research, the impact of the proposed amendments on them will depend upon the marketing strategy which they adopt. Those who reduce prices so as to prevent any incursion into their markets by dosage forms imported from affiliated companies abroad, or by dosage forms manufactured by compulsory licensees, will have to reduce their margins of profit and some of their costs but by definition, they will not cut back production. Those who decide not to reduce prices or not to reduce them significantly, can expect to lose business to compulsory licensees who manufacture in Canada, and to imported dosage forms. To the extent that compulsory licensing provisions of Bill C-102 will permit the small Canadian companies to get access to business which was previously denied to them by patent restrictions, the PIDA program will assist some of them in financing expansion, and the information service to doctors provided by the Food and Drug Directorate will assist them in marketing their products.

Before concluding I want to say a word about the importance of drug safety. This is a matter which the Government has been fully conscious of, in the drafting of the proposed legislation. There are in fact four provisions in Bill C-102 which relate to the question of safety. The first provision requires that notices of application for compulsory licences or interim licences must be given by the Commissioner of Patents to the Department of National Health and Welfare. The second provision makes it clear that nothing in a licence or interim licence granted by the Commissioner of Patents shall be construed as conferring upon any person, authority to do anything that is contrary to the requirements of the Food and Drugs Act and regulations. The third provision permits the Minister of National Health and Welfare to control a situation if it should develop, where a trademarked drug imported into Canada differs from a Canadian drug similarly trade-marked and where the difference in composition between the two is such as to be likely to result in a hazard to health. The fourth provision gives the Governor in Council power to

make regulations which will be administered by the Food and Drug Directorate regulating or prohibiting the import of drugs into Canada and the distribution and sale of these drugs in Canada. The intention is to place beyond doubt that the Food and Drug Directorate has complete and flexible control through their regulations over all imported drugs including of course drugs imported by the established companies. The Minister of National Health and Welfare has fully endorsed the Bill and is satisfied that the Food and Drug Directorate can continue effectively to discharge its responsibilities. I understand that Dr. R. A. Champman, Director General of the Food and Drug Directorate is available to answer questions before this Committee.

With those few remarks I conclude this part of my presentation but I would just like to add that I and my officials are here to answer any questions that honourable senators may wish to ask.

The Chairman: Sometimes that is a dangerous invitation Mr. Minister.

We are now open for questions arising out of the Minister's statement or indeed in any way in relation to the bill.

While the senators are gathering their thoughts together Mr. Minister, I notice that in this bill there is a provision in relation to any food where there may be a patent outstanding dealing with its processing or preparation. You will find that in clause 1 which adds new subsections to the Act. There is provision for applying to the Commissioner of Patents, insofar as a patent is involved, for a licence to proceed, and really the moment you get the licence you have an immunity so far as any action for infringement under the patent which the patentee might have is concerned. But then I notice a difference between the provision in subsection 3 in relation to the preparation and processing of food and the preparation and processing of a medicine. Now I know that the patentee is served with a notice at some stage, but is he entitled to be heard at any stage by the Commission and if so, at what stage?

Hon. Mr. Basford: He is given notice and he is entitled to put forward any objection that he may have to the granting of a compulsory licence or an interim licence. However, if you would like a detailed explanation I will call upon the Commissioner who will explain the procedure he intends to follow under the act and the regulations.

The Chairman: I want to know not only about the extent to which the patentee is informed, because the notice informs him, but also about his right to appeal.

Hon. Mr. Basford: I will call upon Mr. Laidlaw to answer that.

Mr. A. M. Laidlaw, Q.C., Commissioner of Patents: In answer to your question, Mr. Chairman, the regulations under the proposed bill are now being prepared and set out in detail. Of course the procedure that will be followed in order that we can establish a proper system of dealing with these compulsory licences is as follows. In the first instance the applicant will file with the Commissioner his application for a compulsory licence. The details will be set out in the regulations; there will be a required form, and this will come to the attention of the Commissioner and if the Commissioner is satisfied that the applicant has conducted himself properly in the sense that he has completed all the statements required from him, a copy of this application will be forwarded to the Food and Drug Directorate immediately. At this stage the Food and Drug Directorate is brought into the matter. The application is then sent to the patentee who is affected and the patentee has an opportunity over a period of 8 weeks to reply to the applicant in the form of a counter-statement which will also be in another form. Following the receipt of the counter-statement this information will also be forwarded to the Food and Drug Directorate and the third action will then be a reply to the counter-statement filed by the applicant. Now at this stage all material with reference to the application should be in the hands of the Commissioner and also in the hands of the Food and Drug Directorate.

The Commissioner may, under the terms of the regulations, if he wishes to, inform the Department of Industry, the Department of Trade and Commerce, the Department of Consumer and Corporate Affairs, and, if necessary, inform also the Department of National Health and Welfare, about the activities that are going on, and receive any advice from these particular departments.

At this stage, either the applicant or the patentee can request a hearing before the Commissioner, and if the Commissioner, in his discretion, feels something could be added to the application, either from the applicant's point of view or the patentee's point of view, he will grant the hearing, under these terms, and finally render his decision on this basis.

The decision is then notified to the Food and Drug Directorate and, as the Minister has stated, this is merely a licence to avoid, as you said yourself, Mr. Chairman, the possibility of infringement actions. The Commissioner has nothing whatever to do with the safety aspect of this.

The Chairman: Under new subsection 5, which is added by section 1 of the bill, there is provision, at some stage after you receive an application for a licence, to give notice to the patentee.

Mr. Laidlaw: Yes.

The Chairman: And so your regulation would flow out of that.

Mr. Laidlaw: Yes.

The Chairman: I was wondering why subsection 5, which provides for this procedure, deals only with things which may occur under subsection 4, and subsection 4 is a licence in relation to the preparation of a medicine. I do not see what procedures, if any, there are where a licence is in relation to the preparation or processing of a food.

Mr. Laidlaw: That is correct, Mr. Chairman. This bill, Bill C-102, in fact deals only with applications for compulsory licences for medicines, and not for foods. Section 41, in its present state, covers both foods and medicines. In fact, there have been no compulsory applications, to my knowledge, ever made for foods, and I believe it was felt, when this bill was first introduced, it would only complicate matters if we dealt with foods and medicines. Medicines are the only concern of this bill.

The Chairman: If you received an application under subsection (3), which is added by section 1 of the bill to section 41 of the act, what would your procedure be?

Mr. Laidlaw: It would be exactly as it is at the present time with respect to foods.

The Chairman: Would you tell us what that is?

Mr. Laidlaw: At the moment it is a very flexible procedure. It has never been used, to my knowledge, and it would merely be an application field for a compulsory licence to produce a certain food or food process, and the patentee, if there was a patent, would be immediately informed, and the same procedure would flow. The patentee, in every instance, has the right of reply.

Hon. Mr. Basford: The history here, Mr. Chairman, is that section 41 was put into the act in 1923 as a matter of public policy, that compulsory licensing should be allowed for patent processes on foods and medicines. They have been in the act since 1923.

Following the three inquiries that were held—the Restrictive Trade Practices Commission inquiry, the Hall Royal Commission, and the Harley Committee—all of which made recommendations that the compulsory licensing provisions relating to medicines should be amended to make the grant of compulsory licences easier, we accepted those recommendations and they are embodied in this bill. But we had received no recommendations related to processes relative to food, so they are being left as they were and have been since 1923.

The Chairman: With regard to those procedures you are referring to in relation to food, which originally came in with other things in 1923, the licences there would be granted on the basis the patentee was not providing adequate production under the patent for the Canadian market. Is that not the basis?

Hon. Mr. Basford: No, they would be based on what subsection (3) now provides:

...the Commissioner shall have regard to the desirability of making the food available to the public at the lowest possible price consistent with giving to the inventor due reward for the research leading to the invention.

The Chairman: My question earlier was as to the law before.

Hon. Mr. Basford: Subsection (3) is simply a reproduction of the law as it has been since 1923 relative to food, patent processes on food.

The Chairman: Yes. But, Mr. Laidlaw, my understanding of the original section 41 is that:

...the Commissioner shall, unless he sees good reason to the contrary, grant to any person applying for the same, a licence limited to the use of the invention for the purposes of the preparation or production of food or medicine but not otherwise;

Forget this bill. I am talking now of the time before this bill came in. In the application of that, was it not based on whether there was proper and efficient exercise of the patent rights and serving the public?

Mr. Laidlaw: I think the situation, sir, is that any patent, as the law now stands, in dealing with foods or medicines, differs from patents as they affect other things, and for that reason this licensing provision was put in, as the Minister said, in 1923, and has never been exercised. The only reason it has been put in is the desire to introduce competition into this particular aspect.

The Chairman: It seems to me that under the original section 41, and the part of subsection (3) which I have read to you, and which deals with licensing, notwithstanding patent rights in relation to the processing of food and the preparation of medicines, there was authority to you to do the things that are now spelled out in this bill.

Mr. Laidlaw: That is correct.

Senator Walker: Mr. Minister, in all fairness to the drug industry, we feel that the patent holder should have at least some other built-in protection, and perhaps he has—and I will ask about that later—which would allow him to recover some of his research investment and expense incurred in declaring the compound to the Food and Drug Directorate and introducing it to the medical profession. You have repeatedly stated that the inventor will have the market to himself during the time the compound is considered a new drug, and this is normally five years. Unfortunately—and I may be wrong, but I cannot find it—this is not spelled out in any legislation, and we feel that if the pharmaceutical industry is to risk large sums of money, such as it has in the past, to develop new drugs, it should have something more tangible than a verbal opinion from you to protect this risk, as much as we appreciate, I am sure, the verbal opinion. Would it not be an excellent idea that compulsory licences be not granted for imports—I am speaking of imports only—for a period of five years from the date the patent issues. One would not object, I am sure, to a compulsory licence for anyone wanting to manufacture the compound in Canada during that period.

Hon. Mr. Basford: The question of royalties is a difficult one, and what should be included in the royalty and what the royalty should compensate the patentee for. In subsection (4) we provide that the Commissioner in granting the compulsory licence shall make an award with regard to royalties, giving to the patentee due reward for the research leading to the

invention and for such other factors as may be prescribed. The last phrase there, "such other factors as may be prescribed", was inserted in this legislation by me. As you realize, this legislation was before the previous Parliament and that wording is a new addition, which makes Bill C-102 different from the previous legislation. A number of representations were made to us about what should be included in the royalty and what the royalty should cover. None of the recommendations were unanimous and we had different proposals from different groups.

Also, the whole question of patents is, as you know, a subject now being studied by the Economic Council of Canada. Therefore, rather than trying at this point to work out another formula including some of the other factors that it has been urged upon us should be included, we put in those words of general application. We have asked the Economic Council of Canada to direct its attention to this specific question. That is why we would be free under that wording, when we receive advice from the Economic Council, to prescribe such other factors as the Council may recommend. There are different formulae for this in different countries. Britain has a different system from the one we have and includes different items from those we include. It therefore seems to me that at this point and in this legislation we should, as I say, leave it free to be prescribed on the advice of the Economic Council.

Senator Walker: You feel this qualification in that subsection is sufficient to enable you to do what I have respectfully suggested?

Hon. Mr. Basford: Yes.

Senator Walker: As and when the Economic Council makes such recommendations, if they do, you would then do this by amendment to the act or by regulations?

Hon. Mr. Basford: By regulation. It says, "as may be prescribed".

Senator Walker: As you are empowered to do under section 5?

Hon. Mr. Basford: Yes. I do not want to be too long in my answers, but if I may I should like to mention the new drug protection. This is slightly different protection. While a drug that has been developed and invented by one patent holder is under new drug status pursuant to food and drug regulations, it is our feeling that it would be totally uneconomic in 99 per cent of the cases for anyone else to

apply for a compulsory licence, so that the length of time of a drug being in new drug status—Dr. Chapman may want to explain this further—has generally been five years. Therefore, not because of any patent provisions but because of the economic impact of the new drug regulations, it would be uneconomic for anyone else to apply for a compulsory licence during that period, which thereby in effect—not by the patent law but in effect—gives the patent holder that five-year protection period.

Senator Phillips (Rigaud): Am I right in reading the legislation to say that the appeal to the Exchequer Court granted under the old law is now being taken away? If I am right in so reading it, may we have an explanation why that right of appeal to the Exchequer Court is being taken away? At the moment there is an appeal to the Exchequer Court. I do not seem to see it in the proposed amendment.

The Chairman: On page 4 at the top of the page.

Hon. Mr. Basford: I will ask the Commissioner to deal with that. It is his decisions that will be appealed from.

Mr. Laidlaw: There is really no change whatsoever with respect to the ordinary compulsory licence that will be granted. Any compulsory licence that I may award as Commissioner is appealable; it is my decision that is appealable to the Exchequer Court. There is one exception only with respect to this, and that is dealing with the interim licence provisions. Apparently those who drafted the bill felt that the Commissioner might be slightly slack in his operation and not deal properly with the applications as they were received. Therefore, this interim licence procedure was evolved. In an interim licence provision, which is only good for six months, renewable only for another six months, the decision of the Commissioner in that respect is not appealable to the Exchequer Court.

Senator Phillips (Rigaud): Therefore there is a slight variation.

Mr. Laidlaw: A very slight variation.

The Chairman: The variation is that there is no appeal from the interim licence. Otherwise it remains as it is in subsection (4) of section 41 of the original act.

Senator Phillips (Rigaud): May I put a further question? I was not sure whether I had the answer. Can there be a series of interim licences carried on *ad infinitum*?

Mr. Laidlaw: No, sir, there can be only one renewal of an interim licence.

Senator Molson: Is there any implication present in this legislation affecting patents of all sorts of other items? Is this creating a precedent that may have far-reaching future effects?

Hon. Mr. Basford: I do not think so. I say that because section 41 and the concept of compulsory licences for food and drug processes has been in the Patent Act since 1923. In my view, all we are doing here as a result of the recommendations of the three inquiries I mentioned, is to make the compulsory licensing provisions more effective; that is, make them more easily obtainable. There is no difference in principle from the principles that have been in the Patent Act since 1923. I therefore think it is quite wrong to say, as some have said—and I do not deny they have said it—that we are breaching the walls of patent protection around the world. I think that is a gross exaggeration of what this bill purports to do. All it is doing is simplifying and improving provisions and principles that have been in the law since 1923.

The Chairman: Mr. Minister, if a new drug is being developed, quite apart from an application for patent, qualification under the food and drug regulations would have to be sought by the procedures in the regulations, really the registration of this drug as a new drug, whatever the procedures may be. In that connection I understand the person applying must satisfy the Food and Drug Directorate of the efficacy of the drug and, shall we say, the stability of the drug, and that it will do the things urged on its behalf. If I proceeded under those regulations and therefore secured recognition of the drug, is the information about its composition and all those features of it a matter that is public or is it confidential?

Hon. Mr. Basford: I will ask Dr. Chapman to answer part of this question, because I think it raises very important differences that we have all been trying to make clear; that there are two processes in getting a drug on the market. One is the patent process, which comes within my department and is dealt with by the Commissioner, by which a patent

for a process is applied for and granted. And then there are the procedures under the Food and Drugs Act which are different procedures and relate to how to get the drug on the market legally and make it saleable.

The application for the patent does, of course, become public property in the patent office. Any person is entitled to go in and pay a search fee and search out that patent application.

With regard to the procedures under the Food and Drugs Act, because I try to keep these two distinctions separate, I would ask Dr. Chapman if he would explain to you his procedures and what he is looking for in the enforcement of those regulations.

Dr. R. A. Chapman, Director General, Food and Drug Directorate: Mr. Chairman, honourable senators, the intent of the section in the regulations under the Food and Drugs Act which defines a new drug, and the intent of the specific section applicable here, is as follows:

A drug which contains or consists of substances not sold as a drug in Canada for sufficient time and in sufficient quantity to establish in Canada the safety and effectiveness of that substance for use as a drug...

We have found through experience that a minimum of five years is required before a company can establish the requirements under that section. This means that a second company that wishes to put that same drug on the market must meet all requirements of the Food and Drugs Act regulation pertaining to a new drug.

Senator Walker: That part referring to five years is not in the act.

Dr. Chapman: No, sir. There is nothing in the act about that.

Senator Kinley: It is mentioned in the speeches that we have to have five years, however.

Dr. Chapman: But there is nothing in the Food and Drugs Act or regulations that says that a new drug shall be in the new drug status for a minimum of five years. There is no period of time mentioned.

Senator Kinley: But your experience is that that is right, that five years?

The Chairman: The experience is that it takes five years.

Dr. Chapman: Yes, it takes a minimum of five years.

Senator Walker: The Minister told us just a moment ago that, if and when the further recommendations come down he feels it is necessary to make further regulations to ensure this, he will do so.

The Chairman: Dr. Chapman, pursuing the idea I had in mind when I asked these questions originally, without applying for a patent I could go to your Food and Drug Directorate and seek to qualify a new drug for sale and I would have to pass through the machinery that is provided in your food and drug regulation under the Food and Drugs Act. My question then was at what stage, if at all, is there any disclosure to the public of the formulation of this new drug? Forget any question of a patent application.

Dr. Chapman: After the issuance of a notice of compliance the drug can then be placed on the market. At that stage it must carry on its label a quantitative list of the medicinal ingredients.

Senator Sullivan: Who is going to do that?

Dr. Chapman: The manufacturer must do that before he markets the drug.

The Chairman: The label must be approved by you as part of the procedure.

Dr. Chapman: That is correct.

The Chairman: Would the disclosure, as you read it, the quantitative analysis, would that be sufficient to enable some person knowledgeable in the business to formulate the drug himself?

Dr. Chapman: Well, I am sure that this would be sufficient for someone knowledgeable in the business to formulate a similar product. It would certainly not be an identical product on the basis of the information that would be supplied on the label.

The Chairman: So the patent end of the business is desirable, if you want to protect the invention.

Dr. Chapman: Well, certainly, this is necessary.

The Chairman: It is not necessary, no, but it is desirable.

Hon. Mr. Basford: Dr. Chapman in his work is not concerned with whether the com-

pound is patented or not, Mr. Chairman, but the inventor, of course, would be and would have a right to apply for a patent. And he could apply for that patent long before coming to see Dr. Chapman.

Dr. Chapman: If he wishes to sell the product.

The Chairman: I cannot imagine any person, just for the academic interest or the intellectual satisfaction that he gets from doing so, analysing, working out something and applying for a patent but giving no concern to the marketability or the privilege of being able to market the product. He would have to go to you before he would be able to sell it. He would have to get clearance from you. So the two really fit together and...

Dr. Chapman: That is correct.

The Chairman: ... one acts as a check rein on the other. I mean, the patent is of no use unless the drug is cleared with you.

Dr. Chapman: That is correct, yes.

Senator Leonard: Will he already have received his patent before he comes to you or is the patent still pending?

Dr. Chapman: The two procedures, Mr. Chairman, are entirely separate. So it is up to the manufacturer to decide which way he wishes to go.

Hon. Mr. Basford: I think, in the overwhelming bulk of the cases, it would have long since been patented.

The Chairman: That would certainly be the option of the applicant.

Hon. Mr. Basford: That is right. The manufacturer's or inventor's first interest would be to get the patent done. Then he would concern himself with getting it cleared by the Food and Drug Directorate. That is what I would want to do, anyway.

Senator Walker: That is why that five years is so important a consideration.

The Chairman: That is why the regulations under the Food and Drugs Act and the requirement that you clear with them on these points, which takes considerable time to do, seemed to me a sort of check rein even on the person who holds the patent. He cannot go into the market with it at that stage, and even under these amendments, if a compulsory licence were granted under a patent and

the drug itself were a new drug and had not been qualified under your procedures in the Food and Drug Directorate, they could not market it. Therefore, a compulsory licence would be nothing more than a gesture at that stage.

Dr. Chapman: That is correct.

Senator Phillips (Rigaud): Mr. Chairman, I would like to put a question purely for purposes of construction. In connection with the broad approach of granting an inventor proper compensation, having regard to the desirability of the licensee putting on the market a product at as low a price as possible, my question is the following: let us assume that the licensee is abusing the privileges granted to him and is not submitting the article to the public at a fair and equitable price. Is there any provision in the old statute or in the proposed amendments to the effect that either (a) the licence could be revoked or (b) that the compensation to the inventor could be increased?

Hon. Mr. Basford: No.

Senator Phillips (Rigaud): Are we not then facing a situation where in effect we are invading the property rights of the inventor on a fixed basis and we are transferring such rights to the licensee on a flexible basis.

Hon. Mr. Basford: No, I don't think so.

Senator Phillips (Rigaud): Having received the answer for which I thank the Minister, I simply would like to make the observation that perhaps it would be desirable to consider a more equitable approach to the problem. Would you agree?

Hon. Mr. Basford: No, because the property holder of the patent is, pursuant to the granting of the compulsory licence by the Commissioner, paid a royalty by the copier, and that is the payment for his property in the invention. Now as was explained earlier, there is a good deal of discussion as to what the royalty should be based on and what factors should be taken into account in determining the royalty. Nevertheless, he is going to get a royalty from the person who has obtained the compulsory licence. Now, senator, you proceeded to cite the hypothetical case of the holder of the compulsory licence charging a very, very high price for this. Well, I would think that we would allow market forces to operate and I don't think that someone hold-

ing a compulsory licence is going to be able, as a result of market forces, to charge more than the original inventor.

Senator Phillips (Rigaud): May I then be permitted to observe that you have included in the statute a guideline for the royalties because you say "the Commissioner shall have regard to the desirability of making the food available to the public at the lowest possible price...". So there you have a licensee who is expected to comply with the intentions of the Commissioner to provide for the lowest possible price but nothing dealing with compensation to the inventor. Now I can understand the broad principle involved in objections to price-fixing and things like that. But once you incorporate this principle in a statute that the compensation to the inventor should be related to the lowest possible price to the public there should be some relationship between that and compensation to the inventor.

The Chairman: I would expect that the royalty, if it is fixed on a basis of getting the article to the public at the lowest possible price consistent with safety, would have to be prescribed on some scale basis. If the price goes up the royalty would go up if it were on a percentage basis.

Senator Phillips (Rigaud): But as I understand the answer there is no relationship between the price fixed by the Commissioner by way of compensation to the inventor and the current pricing of the product to the public.

Hon. Mr. Basford: Well, I can ask the Commissioner to deal with this.

Senator Phillips (Rigaud): I am putting the question not by way of criticism but simply for the purpose of being instructed.

Hon. Mr. Basford: Well, I will ask the Commissioner to add to what I want to say here and that is that the whole purpose of this bill is to allow greater competitive forces to operate, and so these forces will be operating against the holder of the compulsory licence. This is the whole principle behind this bill, that by opening this up and by allowing competitive forces to operate better, we will achieve the object of the bill which is to get medicines to the public at the lowest possible price. However, I will ask the Commissioner to add to that and to explain his decision because he exercises it as a quasi-judicial official.

Mr. Laidlaw: To add to what the Minister has said, senator, the only problem the Commissioner has when he grants a licence is to fix the royalty based on the guide-lines now written into the section, namely lowest possible price versus research relating to the invention. This of course involves a very arbitrary decision. The terms of the licence would not include for example saying "you must sell this drug at this price." The royalty would be fixed and then it is up to the applicant on the open market to charge what he wishes to charge. But the object and purpose of this legislation is to open up the field to quite a number of applicants so that they between themselves will be fighting to keep the price down. But in the meantime the patentee is in every instance at least protected.

Senator Phillips (Rigaud): I would like to quote one instance where I would like to see greater powers given to the Minister rather than lesser power. I think if there was a power to increase the royalty if the Commissioner was not satisfied that the licensee was making it available at a suitable price, this would be the best way to arrive at a suitable price.

Hon. Mr. Basford: We willingly accept the power, senator, but we are having enough trouble with this as it is.

Senator Leonard: Is there a power to issue more than one compulsory licence in connection with any one patent?

Mr. Laidlaw: Depending on the number of applications that come before me relating to one particular drug, if I am satisfied, I can issue a dozen licences.

Senator Leonard: So then you have competition and the play of the market.

The Chairman: But as against that you would have to look at the size and the capability of the people applying. You would not want to develop trade in licences.

Mr. Laidlaw: If somebody can convince me that there is a good reason for not granting a licence, then a licence will not be granted.

The Chairman: Following the granting of a licence and completion of whatever appeal procedures are involved, you are then through with it except in your capacity as Commissioner of Patents where there is any attack on the patent for reasons other than the reasons for which you granted it.

Mr. Laidlaw: That is right.

The Chairman: Mr. Minister, is there any proposal to police—and I use that word for want of a better one—the operations of the people who obtain compulsory licences to manufacture?

Hon. Mr. Basford: Well, the policing provided for by the Food and Drug Directorate, yes, but not by us.

The Chairman: But at what stage would this be? I am assuming that the drug is cleared with the Food and Drug Directorate and can be marketed. Now in those circumstances once a person has a compulsory licence, how do you do any policing, and if you do, what authority do you have, if any? If you find he isn't carrying out the intent behind the legislation and you are not getting the results you intended, namely lower prices, what can you do?

Hon. Mr. Basford: The policing as to marketability is carried on by the Food and Drug Directorate and Dr. Chapman may want to add to what I say on this matter. But so far as pricing is concerned, we intend, in conjunction with the Food and Drug Directorate and through the publication of the information bulletin which I mentioned a little while ago, to keep and maintain a constant surveillance over prices, and what is happening in the market. We will be exercising that sort of—I do not like using the word "policing"—but we will be exercising that sort of surveillance. As to whether, in fact, the holder of a compulsory licence is manufacturing or not, we have no authority under the legislation to go in and order him, if he has a licence, to manufacture.

The Chairman: Nor have you any authority to rescind his compulsory licence.

Hon. Mr. Basford: No.

Senator Walker: To hear the Commissioner talk, it sounds like issuing taxi licences—he can issue a dozen if he wants to. This legislation is so far-reaching in this whole industry, what check have you, other than your own good judgment, Mr. Commissioner, as to as to the number of licences, keeping in mind what the Chairman has just said, that once having issued it you have no power to rescind it?

Mr. Laidlaw: The legislation, in effect, really authorizes the Commissioner to grant licences as of right. There are only two features which come in to prevent these so-

called licences of right. The first is that there must be good reason to the contrary shown in order to allow the Commissioner to dismiss an application. This probably will be initially, at least, in the hands of the patentee. The patentee, in his counter-statement, will undoubtedly, and possibly at a hearing later, put forward every single reason to the contrary that he can think of, and it will be my determination as to whether the patentee is able to convince me that the licence should not be granted. The second feature is the royalty assessment which, as I mentioned earlier, is a straight, arbitrary judgment. It is not likely to be interfered with by the Exchequer Court in that sense, provided I have acted according to the normal principles of administering the law. But you are quite right, Senator Walker, in effect these are licences of right; and, following what Senator Leonard said, the more licences that are issued involving one single patent or drug, the more competition is going to be introduced into the market place, and the licensees will actually be quarreling among themselves to produce it at the lowest price.

The Chairman: I would like to ask Dr. Chapman a question.

Dr. Chapman, let us assume you have approved of a new drug for sale. Thereafter, what steps do you take, what supervision do you exercise over the quality of the product that, for instance, the compulsory licensee may be making and selling, and whether he is adhering to the formula? Is this a constant supervision? How is it dealt with?

Dr. Chapman: Mr. Chairman, any drug on the market, including a new drug for which a notice of compliance has been issued, must meet all the requirements of the Food and Drugs Act and regulations. These include the requirement relating to the manufacturing facilities and controls, labelling requirements—it must, of course, meet the labelled potency, and it cannot be misleading in any respect in regard to its merit or safety.

The Chairman: This is starting out, but what day-to-day or regular, systematic supervision do you have?

Dr. Chapman: We carry out a regular surveillance of not only the manufacturing plants but also a regular surveillance of the drug products on the market, and this is a continuing program.

The Chairman: Are there any other questions?

We have been concentrating on the question of the patent rights. We have not been dealing at all, Mr. Minister, with the compulsory licences to import, as against an existing patent in Canada, to import a product made abroad. Nor have we dealt with the question of importing into Canada a product made abroad bearing the same brand name as a product produced and sold in Canada. Do you have any comment to make on that, by way of what I might call an opening statement?

Hon. Mr. Basford: No, Mr. Chairman, I mentioned these features in my opening statement.

The Chairman: Then I have a question or two, if I may.

The proposal in the legislation, so far as it deals with a trade mark, is that there will be an immunity granted in certain circumstances against any action for infringement against a person who imports into Canada a product bearing a brand name in respect of which there is a Canadian who has the trade mark right. This can only be done, I take it, by some person who obtains a compulsory licence to do so—is that right—or a licence? Which?

Hon. Mr. Basford: Under section 3 of the act, Mr. Chairman, dealing with amendments to the Trade Marks Act. I might make it a little clearer if I use a fictitious name, but if you have an American company which holds a registered trade mark on a drug in dosage form in the United States, and its subsidiary in Canada holds the same trade mark and carries the same drug in Canada, the amendment to the Trade Marks Act would allow someone to import from the United States, from the parent company, the trade marked product and sell it in Canada without being in breach of the Trade Marks Act.

There is a provision in subsection (2), a safety measure by which, if the trade marks are confusing, the Minister of National Health and Welfare may, by notice in the Canada Gazette, ban its sale. This section would only come into play if the subsidiary operating in Canada were charging a very inflated and protected price for the trade mark dosage form. This would then make it economic for someone to go to the United States, or some other country, and buy the trade mark dosage form and bring it into Canada.

I think this section is hardly likely to be used, because I think the reaction of the subsidiary in Canada would be to reduce its price to make it uneconomic for someone to go abroad seeking the dosage form.

The Chairman: This is not a blanket right to import a brand name product under the brand name of the product in Canada to anybody who may want to do so; it is only where the relationship exists of what you describe in the statute as a related company? Is that right?

Hon. Mr. Basford: Yes.

The Chairman: So there is some limitation.

What check, if any, is made on the adequacy of the article that is being brought in from outside, as to its potency, its safety, and all these things?

Hon. Mr. Basford: The Food and Drug Directorate has already obtained some regulations, last spring, dealing with this situation, and so I would ask Dr. Chapman to deal with this again, because it comes within this area.

Dr. Chapman: We have requirements, as the minister has indicated, that a person wishing to import a drug into Canada must have information and evidence satisfactory to the directorate, available in Canada, to the effect that the conditions—that is the manufacturing facilities and controls—under which the drug was produced in the country of origin meet the requirements of the Canadian regulations. Furthermore, the person wishing to import the drug must either have the drug analyzed in Canada to determine its potency and to indicate that it is satisfactory in that respect, or he must have information available that is satisfactory to the directorate to indicate that it has been adequately tested in the country of origin. I believe these requirements are adequate to monitor the quality of drugs coming into Canada.

The Chairman: I have one question I should like to ask on this subject, Mr. Minister. You use the expression “related company” in section 3 in your new subsection (1) of section 49A, but where do we look for any definition of “related company”? Are we just thrown back on the general state of the law?

Hon. Mr. Basford: It is defined in paragraph (r) of section 2 of the Trade Marks Act:

“related companies” means companies that are members of a group of two or more companies one of which, directly or

indirectly, owns or controls a majority of the issued voting stock of the others.

The Chairman: Yes, that is correct. Are there any other questions on this aspect, on trade marks?

Senator Carter: I have one that is related to the previous question. How do you define a new drug? Is every variation in a formula counted as a new drug? When does a modification of a drug already existing become a new drug?

Hon. Mr. Basford: I will ask Dr. Chapman to answer that.

Dr. Chapman: There are actually three sections to the definition of a new drug in the regulations under the Food and Drug Act. The first is a drug that has been sold for sufficient time and in sufficient quantity in Canada to establish its safety and effectiveness. The second is where it is a new combination of drugs which may have been sold on the Canadian market, but the combination has not been sold for sufficient time and in sufficient quantity. The third concerns a drug that has been on the market but is now being recommended for a new use, or there are new claims being made for that drug. Any of these three conditions may throw a particular drug into new drug status.

Senator Willis: Are there any inspectors who go round from time to time visiting manufacturing plants?

Dr. Chapman: Yes, we have inspectors.

Senator Willis: What are their qualifications? Are they pharmacists or medical doctors?

Dr. Chapman: No, sir. They are all university graduates.

Senator Willis: I did not ask that. I asked were they pharmacists?

Dr. Chapman: A number are pharmacists.

Senator Willis: Have you anybody who is a medical doctor?

Dr. Chapman: No, sir, not as inspectors.

Senator Willis: Are you a medical doctor?

Dr. Chapman: No, sir. I have a Ph.D. in chemistry.

The Chairman: Are there any other questions on this aspect?

Hon. Mr. Basford: May I just supplement what Dr. Chapman has just said? There was evidence before the house committee relating to the staff of the Food and Drug Directorate, and Dr. Chapman put on the record the people he has employed in the directorate, all of whom are qualified.

Senator Kinley: This bill had a rather restricted discussion on second reading, with good reason. It is a rather technical bill and the average man would not know enough about it. I have some knowledge and some experience of the drug business in this country, although I am not connected with it now and have not been for some years. I supported the bill because I believe in the principles of it, and I did not want to get into trouble over details. However, I have since been looking over it and have read the speech of the minister on October 17, 1968, a very able speech and full of knowledge. In it he quoted from the Harley Report and said they were giving nine countries of the world where drugs were sold and were invented, as it were, and that showed that Canada was above the average in cost of the drugs. I immediately thought of insulin, which was a great achievement of a Canadian, Dr. Banting; it was of world-wide benefit. I was surprised to see to that that drug was included. It is drug; it is a pharmaceutical. Why was it not included in this record for the purpose of showing the public how much drugs could cost?

I suppose I will be told that insulin is not a prescription drug. I cannot conceive of anybody using it unless it was prescribed, although I think they can buy it afterwards ad lib. I am told insulin is cheaper in Canada than in any other country in the world. I am also told that in Nova Scotia the government supplies insulin and gives the druggist 15 per cent profit. People with low income, of \$2,800 a year, get insulin on the government. I can tell you, it is a big business, just that alone. The American tourists have been buying so much insulin that the American customs authorities are turning them down when they say it is a medicine; they were taking so much of it home with them. That is one thing that is not here, and I think it is unfair.

What about penicillin? Penicillin is not in here. It is one of the most widely used drugs in the country, indeed in the world. I was interested in the doctors' description of this. I know there was a breakthrough in England on penicillin that was considered to be of

world-wide importance. I have been corresponding with the department for two years on this subject, and although I got fairly good answers I got nothing conclusive. However, that is by the way.

The point is that this report shows what drugs cost in Canada, yet it omits the two most important drugs, and those having the largest sales. I do not think it is fair. I do not know who is responsible for the Harley Report, but I think they are withholding information from the people of Canada. We are told that 85 per cent of the drugs represented and used are imported drugs.

Somebody questioned whether the high price of labour in Canada would affect the price of drugs. This report says no. I suppose that is so because 85 per cent are imported and also because, I suppose, the income tax has an interest in research and tends to benefit the manufacturers of drugs. I have always envied those manufacturers in research because they were fairly well treated. However, I don't think their investments in research are all that much because the country is very generous in that regard.

Now it has been said that there was 10 per cent profit in manufacturing but 20 per cent profit in the drug business. I don't know about the drug business so much, because it was only the retail stores that I was interested in, but I would not mind being a manufacturer, if I could get 20 per cent net profit. In fact, if I got 5 per cent I would feel good.

No, it seems to me that that is an expression that should go out, because there is no manufacturer, unless he is a special case, who can make that much.

Now, we talk about the men who do the research. Well, they make money out of this thing, and it is right that they should be paid for merit. I have always admired the man who waves his flag, and by that I mean the fellow with the patent or trademark, because the trademark shows he has faith in what he is doing and wants to show to the company what kind of a business he has. That is all to the good.

Just as an example, Bayer is supposed to be the biggest seller of drugs in the western world. I don't know whether Bayer still has a patent. I know they were before the Exchequer Court once or twice. I believe they still have a trademark. But the point is that any manufacturer can combine acetylsalicylic acid

to make the preparation that is sold as Aspirin, so long as they do not use the trademark name. It is the same drug. And by doing that you can improve on the price by at least three times. Nevertheless, Bayer Aspirin is still demanded by the public, because the public wants a product that is backed by a trademark.

And yet I can foresee this business of patenting drugs getting us into some difficulty because of the fact that patent law is complicated and is part of what you might call special law that only very eminent lawyers in this country make a specialty of, and perhaps that in itself contributes to costs.

In any event, it seems to me a little below the belt to interfere with private or free enterprise to the extent contemplated in this bill. After all, a prize fighter may earn \$100,000; a golf player may get that much; the man who can play a professional sport can earn that much; and nobody will question any of these people. And then there are the "dealers" who should properly be called agents. I refer to liquor dealers and automobile dealers and so on. You talk about the 10 per cent or 5 per cent, but in the automobile industry it is 17 per cent. And I know that in our business in Newfoundland we pay 30 per cent for distributors. Nobody will sell or develop anything for 5 per cent anymore.

Now, I don't know what these men in the drug business are making. I know that some of these companies are reliable and some are American-controlled. I find in this list here that the best country is England so far as low prices are concerned. It is perhaps the lowest country in the world. France is another country with low prices and so is Italy. So while you talk of lower prices, perhaps all you need to do is free the road from England, France and Italy and you will give drugs to the people in Canada at reasonable prices, providing too much is not spent in this country on brokers.

Now, it seems to me that while we want drugs as cheaply as we can get them, we must realize that the drug business has the same privileges as other businesses in this country. You talk about manufacturers working on a 10 per cent basis. There is nothing in that now. That was the margin of profit before. Dr. Chapman said that we want to have active control of these drugs, and he referred to a man in England distributing in this country. I have distributed some of these things. So I know what I am talking about.

He gets a distributor—we won't call him an agent—and he pays him a certain amount that is established. Everybody in the world gets that, and if you want to go behind that you are going to destroy the freedom between the inventor and the distributor and, if you do that, you may stop the supply because a good company won't go back on its distributor unless he is a poor subject or unless he does not do a good job or if he is charging more than the price that the man demands—and some of them do. I know we shipped to foreign countries and they raised the price over our catalogue price. I know they raised the price on many things, but you can't go behind distributors' backs and try to buy from a manufacturer who is doing an honest business, and, if he is an inventor he is entitled to merit.

I remember when I first came to Parliament, there was a case for printing machinery. The company was stopped from producing that machinery during the war and then their patent ran out. The chairman of the company came to Parliament for an extension of that privilege and got it because everybody thought it was only fair that a company that was denied the privilege of selling something during the war should have their privilege extended. Now, while patent rights can be abused, we should not make one industry pay the price because a power resolution of Government is a little bit out of the way. It should not stop it.

I don't like it. I may be wrong. I am in favour of the legislation, but I do think that we should buy through international things that are for the benefit of the health, and I do think that we should have certain things of business that the Government even should do it, if they have the power, because after all that is only fair.

I would think that we should have certain ethics in business that the government should keep in mind. After all we have in this country a system of free enterprise where people get paid on merit. Admittedly some people do make a lot of money but the government takes most of it away from them. I do not like this in relation to the trade mark. I do not mind so much about the patent, but a man who flies his flag can be trusted.

Hon. Mr. Basford: Mr. Chairman, may I just make a few remarks. With regard to the table that the honourable senator cited from my speech of October 17th which the Opposition and some of the industry had some fun

with, may I explain that that table was simply an updated version of the schedule or Appendix F on page 80 of the Harley Report which was a table of comparative drug prices prepared by that committee, and which I had nothing to do with insofar as the selecting of the drugs was concerned. As I understand it they were selected on two bases, namely that they were the highest selling of all drugs in Canada and that comparative dosage forms were available for these various countries where comparisons were being made. This Appendix F formed part of the evidence before the Harley Committee which brought the committee to the conclusion that prescription drug prices in Canada were higher than need be, and I think those were the words used. So that both my predecessor, when he introduced the bill in the previous parliament, and myself, when I introduced the bill, felt we should use the same table and have it brought up to date to show current conditions. Now it showed in October the same conditions generally which prevailed at the time that the Harley Report was prepared, namely that prescription drug prices in Canada were unduly high. I did not prepare the table or select the drugs. Now why insulin was not in there or penicillin I cannot say. I might add that the patent on insulin had run out and, of course, there never was an original patent on penicillin because it was developed by a university and they did not patent it.

Senator Kinley: I did not say it was.

Hon. Mr. Basford: No. That is why the table was used in the speech you referred to, and as I say, it was simply an updated version of the Appendix F to the Harley Committee report which used the same drugs and the same dosage forms in the same countries and obtained from the same sources. Now the honourable senator pointed to England as being the lowest and said "free the road" and that is really the purpose of this legislation. We want to bring into play the forces of international free enterprise so far as the drug industry in Canada is concerned and to allow competitive forces to operate. I do not see this as an interference with free enterprise and if I may quote the Supreme Court of Canada, I have here a report in which the Court said:

In my view the purpose of s. 41(3) is clear. Shortly stated it is this. No absolute monopoly can be obtained in a process for the production of food or medicine.

On the contrary Parliament intended that, in the public interest, there should be competition in the production and marketing of such products produced by a patented process, in order that as the section states, they may be 'available to the public at the lowest possible price consistent with giving to the inventor due reward for the research leading to the invention'.

That was the purpose of parliament in 1923 as confirmed by the Supreme Court of Canada, and the sole purpose of this legislation is to improve that process.

Senator Kinley: Mr. Chairman, this report I have here refers to the most used drugs in Canada.

Mr. Chairman: You have made your point, senator.

Senator Sullivan: I have a question concerning the bottom of that table where there is an asterisk which refers to prices of quantities other than 100. Can you enlarge on that for me, please?

Mr. R. M. Davidson, Director, Merger and Monopoly Division, Combines and investigation Branch, Department of Consumer and Corporate Affairs: Senator, the price given where an asterisk is shown is the price for quantities of 50 or 25.

Senator Sullivan: That was not stated, but the dosages of the various drugs are stated.

Mr. Davidson: But the calculation is made in such a way that if the price for 25 were \$1 in the table, then the price for 100 is shown as \$4.

Senator Kinley: But that is in fine print in this. It says here "the table referred to above is as follows" and then it shows the comparative prices to the retailer of some of the most commonly used drugs in different countries.

The Chairman: Yes.

Senator Kinley: And some of the drugs that are not commonly used now have gone up in price because of the lower trade. Some of the pills mentioned here are not used so much now. They have got the contraceptive pill in here and they have chloromycetin. But the contraceptive drug is one of the most discussed drugs in this country at the present time. It is the most expensive drug in Canada.

Hon. Mr. Basford: Well, Senator Kinley, it is a great credit to you that you are so concerned about birth-control pills. As I have said, this list was selected by the committee and I am not in a position to speak for that committee. It is the committee's view that these were widely prescribed drugs and they selected them to give a comparative picture of international conditions.

Senator Kinley: But I am interested in this question because of the report that has come to us recently. I have forgotten the name of it, but it is the one that recommends that the government take care of social services to the public. Now the prices of these drugs are going to be very high. Now we are to have this system in Canada where the government is going to pay and the provinces will have to pay. They want several things that are not in the hospitals, and this is going to cost a lot of money. These things are important, and they are particularly important to us if they are going to cost us a lot of money.

The Chairman: Honourable senators, the minister has made his statement. We have questioned him on the various parts of the bill, and I think I have already announced that at that stage we would defer section-by-section consideration and hear the doctors who are here for the purpose of presenting their views. If it is in order, shall we proceed on that basis?

Senator Sullivan: Mr. Chairman, I am sorry that the Minister cannot stay. We have three distinguished colleagues from the University of British Columbia who want to give evidence here today: Professor Darrach, Professor Pernarowski and Professor Ford. I am sure that the Minister is interested in the University of British Columbia, he just having appointed Dean Young as Chairman of the Prices and Incomes Commission.

Hon. Mr. Basford: I am going to stay as long as I can, Mr. Chairman.

The Chairman: Senator Sullivan, I have a list of the witnesses and a suggested order. Would you support this order? I was proposing to call Dr. Ferguson first. Whom would you suggest?

Senator Sullivan: Dr. Ferguson.

The Chairman: Gentlemen, this is Dr. Kenneth Ferguson, who is the Director of the Connaught Medical Research Laboratories, the University of Toronto. He is a former

Professor of Pharmacology and Head of the department of the University of Toronto, a Fellow of the Royal Society of Canada, and a former Research Fellow in Physiology at Cambridge University, England. I know Dr. Ferguson personally, and I need hardly say that he is one of the outstanding and leading medical scientific research men in Canada.

Dr. J. K. W. Ferguson, Director of The Connaught Medical Research Laboratories: Mr. Chairman, honourable senators, may I start by raising a question which you may, if you see fit, ask Dr. Chapman? I was very interested in the discussion about the five-year period of protection as a new drug, and I was not sure whether Dr. Chapman meant this five years was from the start of the application to have a new drug permitted for sale, or whether it was five years after the sale was permitted in Canada—and by “sale” I mean sale on the market on a general basis.

The Chairman: Dr. Chapman is still here, and we will clarify that right away.

Dr. Chapman: Since the regulation reads “sold for a sufficient time in Canada” it actually starts from the point at which the drug is marketed in Canada.

The Chairman: And if there is clinical research of five years or more before you licence or qualify the drug for marketing, is that looked at?

Dr. Chapman: No, sir. That is the accumulation of information and data which is required in order that a notice of compliance may be issued.

The Chairman: I note what you say, Dr. Chapman, but I am not sure I go along with that interpretation. However, that does not matter for our purposes here.

Dr. Ferguson: I think I understand correctly that Dr. Chapman had in mind from the time the drug could be marketed broadly.

The Chairman: That is right.

Dr. Ferguson: There are, I think, two aspects of this bill which are of great public interest. The first is: What will the bill do to the price of drugs at the retail level? And the second is: What will it do to the quality of drugs sold in Canada? There are some other questions too, but these are probably the most important for the public interest.

As to the first one, I am quite ready to accept the statement of the Honourable Mr. Basford which he gave us, that the prices which will be affected by this legislation refer only to a small proportion of the drugs on the market, namely, a certain number of prescription drugs which are protected by patents. I believe, if I read the press correctly, that he has also warned us not to expect too much. I am quite prepared to take this as a statement of qualified opinion. In fact, I think it is an understatement. Personally, I do not really expect it will have very much effect at all on the price of even this limited group of drugs, for the reason the Minister gave, that you have to persuade the doctors that the cheaper competitor is really as good. I really do not think the new drug bulletin which the Government is going to produce—and we do not know yet exactly what is going to be in it—is going to persuade the doctors really these drugs are as good as those they have been used to, because doctors form their opinions in their own particular way: firstly, by their own personal experience; secondly, by exchange of opinion with other doctors in the hospitals; thirdly, by going to medical meetings; and, fourthly, by what they read, whether in the medical journals or a Government bulletin. So, I foresee really little effect on the price of drugs, but I do expect a substantial increase in the price of government, because Dr. Chapman is going to have to spend quite a lot of money to do the much larger job this bill will give him to do. I think that he will do his best to do it, but I think that he is optimistic in thinking that he can do it as perfectly as he seems to think. It is going to cost the taxpayer money, and, as a taxpayer, I do not like increases in Government expenditure for a benefit which is very uncertain.

On the subject of what this legislation is going to do to the quality of the products in Canada, I am prepared to say very little because there are other experts here who have a lot of personal experience with this problem of the quality of drugs.

In answer to a question, Dr. Chapman said, "Oh yes, we can test all these drugs and say whether they are all right." When you are dealing with an industry which is as varied as the drug industry in size, in competence and integrity—and there are many hundreds of distributors and importers who have very little scientific knowledge and sometimes perhaps not too much integrity—I know they can fool Dr. Chapman from my own personal

experience because we have done some importing too and we know that the samples sent to Dr. Chapman passed with flying colours, but the hundred leaders that came to us we would not sell because we were able to test them; but the importer who received it was not able to do that. That is one instance.

The Chairman: Do you mean there was a difference in the quality as between the samples sent for Government clearance and the commercial quantities delivered to you?

Dr. Ferguson: Absolutely. There is another example concerning the Government of Ontario—with which I have had something to do—and they found that, in order to be sure that a sample which as submitted for testing was the same as the product that was going to be delivered, they had to say, "Deliver the whole lot to us. We can put it in a warehouse and test it, and if the whole lot does not meet our specifications, back it goes to you." I do not think Dr. Chapman can do that for the country as a whole.

Senator Walker: That is fraud of the worst kind. Is that widespread?

Dr. Ferguson: It is fraud by a small proportion of very active importers.

The Chairman: It is fraud in a very dangerous field.

Dr. Ferguson: Yes. It is a kind of fraud that is very difficult to control. Dr. Chapman is very efficient in controlling the parts of the industry which want to obey the law, but he has great difficulty exerting much pressure on the parts of the industry which cut corners or deliberately defy the law. I do not think I need to amplify on that a great deal. You have heard of the black market in LSD and in barbiturates, to say nothing of narcotics. It is just too hard to control these people who either deliberately defy the law or just try to cut corners.

The Chairman: That does not mean, of course, we should give up trying.

Dr. Ferguson: No, not a bit, but also there are all the other safeguards built into trade mark and patent legislation.

Senator Macnaughton: May I just interrupt to point out that the minister is sitting away at the back of the room, and I do not think it is right. We want to make sure that he hears.

Could the minister be invited to join you at the table, Mr. Chairman?

The Chairman: He was here and I thought he was going to stay. Mr. Minister, do you want to sit up here?

Hon. Mr. Basford: I am fine here. I can hear.

Dr. Ferguson: I said I would not say any more about the effects on the the quality of drugs that this legislation can have. I should perhaps say something about the trade mark aspect of this proposed legislation. The minister has said he really does not think it is going to be too effective. I hope he is right, because about the only way it can be effective is when it is really legalized misrepresentation. I cannot believe, as he said, that the owner and controller, the main company, the parent company, is going to allow a subsidiary to be undercut substantially by imports from the United States. I know the government department has asked the United States company to sell them something that has been sold at half price in the U.S.A. compared with Canada, and they merely say, "That is what we have a subsidiary in Canada for. Go buy from them." The only circumstance in which this legislation might work would be where the control of the major company is very slight; it may own a partial share of a trade mark by agreement, and it may be for sale by a subsidiary in Turkey which is not very tightly controlled, which might send in something about the trade mark before Dr. Chapman can catch up with them and find that it is not quite the same drug and put it off the market.

The Chairman: Or the definition of "related company" might be enlarged?

Dr. Ferguson: Yes, the definition of "related company" might have to be tightened up quite a bit, and the importer would have to prove what the financial relationships were and how stringent the control of the related company in Iran, or wherever it might be.

There are two other aspects of the legislation that I am sure will interest you. One might be called the political intelligence or political wisdom of it; the other is the political ethics. As far as political ethics are concerned, this is a case of expropriation. We all know there has to be expropriation when there is a definite public interest to be served. In my opinion the public interest that would be served by extending compulsory licensing

to importation is very indefinite, but the interest to a less competent competitor is very definite. In other words, this is expropriation for an indefinite public benefit—although we hope there might be one in terms of price it will be very small—but the real beneficiary is a less competent rival or business competitor. Now, is it right to expropriate private property for the benefit of less competent competitors, not to say less scrupulous? I think I would like to leave it at that.

The Chairman: Are there any questions?

Senator Walker: Would you just give us the other side, doctor, how the present situation that we have avoids the fraud about which you spoke?

Dr. Ferguson: The thing is that under the present situation, where the patent holder has an interest and a right to investigate and to prosecute, you have double protection. You have many people working in the interests of protecting the quality of the drug besides the Food and Drug Directorate.

Senator Walker: Including the industry itself?

Dr. Ferguson: The industry itself, or the holder of the patent.

The Chairman: Thank you, Dr. Ferguson. Who would you suggest should be next on the list?

Senator Sullivan: Dean Hughes.

The Chairman: Gentlemen, Dr. F. Norman Hughes is Dean of the Faculty of Pharmacy, the University of Toronto, and Chairman of the Deans of Pharmacy of Canada.

Dr. F. Norman Hughes, Dean of the Faculty of Pharmacy, University of Toronto: Mr. Chairman, honourable senators, first let me thank you for the privilege of being here today and saying a few words about this proposed legislation. I should emphasize at first that the views I express are personal ones; they do not necessarily always represent the views of the association mentioned by the chairman. They are views based upon 31 years in pharmaceutical education and some 40 years in pharmacy.

I think I should say at the very first that, like all of you, I support any reasonable measure to reduce the cost of any goods or services to the public, be it food, legal fees, medical fees, drugs or pharmaceutical services—and yes, Mr. Chairman, even taxes.

Senator Phillips (Rigaud): Might I suggest, Mr. Chairman, that if the witness wants a sympathetic audience he might eliminate legal fees!

Dr. Hughes: I rather thought so.

Senator Walker: But not taxes.

Dr. Hughes: Not taxes, no. However, I suggest, with Dr. Ferguson, that such measures should be viewed very carefully and evaluated very carefully on the basis of several criteria: first, their effectiveness to lower the cost to the consumer; secondly, the consequent government expenditure, which should not be so substantial as to wipe out any savings; thirdly, the damage to the Canadian economy and to the development of research programs in Canada; fourthly, the effect of any action on Canada's integrity in international relations.

In connection with the last-named criterion, I am not an authority by any means on patents or international agreements on patents, so I will only say respecting this aspect that it seems to me contrary to the basic principle involved in international agreements on patents. If this is so, as a Canadian citizen I would fear for the effect on Canada's image abroad.

Similarly, I am not an economist, and I cannot therefore place a dollar value on the probable or possible damage to the Canadian economy resulting from the operation of Bill C-102 as it stands. As a layman, however, in this respect I find it very difficult to understand how it can but help to reduce the total manufacture of drugs in Canada, and without any doubt whatever—and I say this with all respect to what the minister has said—there must inevitably be a stultification of research in the Canadian pharmaceutical industry, research which has just started to expand, and in fact, I suggest, a stultification of any desire by industry to support research in the universities. It has been amply demonstrated that this is a natural consequence of removing drug protection.

The United States Department of Health, Education and Welfare has had a task force on prescription drugs studying all aspects of drug production and distribution. In a report on August 30, 1968, the following statement appears:

Virtually all the important new drugs of recent years have come from countries providing patent protection. Few, if any,

have come from Eastern European nations, which offer little or no patent protection.

I suggest that we do not wish to create a situation in Canada that will for ever prevent this country from taking a leading role in the development of new drugs or new anything else.

Mr. Chairman, as a pharmaceutical educator, this effect gives me genuine cause for concern. As President of the Association of Deans of Pharmacy of Canada, I was signatory to a letter addressed, on behalf of my colleagues, to the Minister of Consumer and Corporate Affairs and to the Minister of National Health and Welfare. This was sent in respect to both the former Bill C-190 and the current Bill C-102. It reads in part as follows:

The Deans of the Canadian Schools of Pharmacy are greatly concerned at the effect which Bill C-190 will have on our graduate study and research programmes. Our faculties have developed these programmes in anticipation of a continuing expansion of research and development in the pharmaceutical industry in Canada. In the decade ending in 1965 there had been 84 students graduated with the master's degree and 9 with the Ph.D. degree. Since then the number of graduate students and the demand for them has been increasing. For example, in the Session of 1965-66 there were 74 master's candidates and 13 Ph.D. students enrolled in our faculties. With the curtailment of research and development in the industry and possibly even of the manufacturing of drugs in Canada which would inevitably follow the passing of this legislation in its present form a serious setback to Canadian graduate programmes in pharmacy must occur.

I repeat, Mr. Chairman, we are greatly concerned at the effect of this legislation on our graduate programs, hence on pharmacist research in the universities and the retention of well-educated, capable and ambitious young men in Canada.

The first criterion by which we would evaluate any measure to reduce costs to the consumer is effectiveness. As yet, I have seen no estimate by Government of the quantitative effect of this measure on prescription prices.

Like Dr. Ferguson, I agree implicitly that this, as I see it, is bound to be very slight.

In all of the discussions—and at times they have ranged from hysteria to exaggeration—respecting drug prices, I have been struck by the almost complete absence of any apparent recognition of the fact that the supplying of prescription medication is more than the sale of a commodity. The pharmacist, who interprets, carefully assesses all aspects of the prescriber's order, and fills the prescription with appropriate comments and cautions to the patient, performs a professional service for which he is compensated by means of a fee embodied in the price paid by the patient. Most Canadian pharmacists now simply add the actual cost of the drug to the fee to arrive at the charge made to the patient. In 1967 the average prescription charge was approximately \$3.58 in Canada. Approximately 56 per cent of this charge consisted of fee, and the balance was the cost of the medication. This would not be altered by any change in the cost of the medication.

Also, having regard to the variety of and kinds and costs of medication prescribed to the probably limited number of drugs where imported costs would be substantial, and also to the natural reluctance of physicians to prescribe cheap medication with which neither they nor their pharmacists have had experience, it would not be unreasonable to anticipate a rather small effect on prices paid by the patient. Having regard to all these factors and continuing inflationary pressure, one is inclined to suggest any savings would be very few cents on the average prescription.

Mr. Chairman, our final concern is with clause 5 of the bill which provides enabling legislation under which regulations may be passed as deemed necessary to protect against unsafe and inefficacious drugs. I also note two recent new sections of the regulations under the Food and Drugs Act C.01.055 and C.01.056 designed to do likewise. The Minister of National Health and Welfare has also pointed out in a letter to me that, and I quote:

The Food and Drug Directorate has been provided with the necessary financial resources and staff to implement the recommendation of the Harley Committee...

namely that...

...the Food and Drug Directorate publish not less than once a month an informative bulletin to the medical profession

giving complete details on drugs and their actions and reviewing major drug uses in Canada.

He also informed me that, and I quote:

Eleven new positions were made available in April, 1968, for the specific purpose of improving the Food and Drug Directorate's ability to maintain adequate surveillance over imported drugs. Action has been taken to increase substantially the personnel and financial resources available to the Food and Drug Directorate in 1969-70.

This reads very well, Mr. Chairman, and I can assure you I have the utmost respect for Dr. Chapman and his excellent staff. However, I do seriously raise the following questions. The first one, which is the same as that raised by Dr. Ferguson, is, is it going to be possible for the Food and Drug Directorate really to assure the potency, let alone efficacy, of imported drugs? Second, is it going to be the responsibility of the Food and Drug Directorate to serve in any sense as quality control laboratory for foreign companies, or is the surveillance merely to be a review of documents? Third, what is to be the ultimate cost to the Canadian taxpayer of the greatly expanded function? It seems to me quite possible that this ultimate cost may well exceed any total dollar savings in drug costs to the consumer. Fourth, has any cognizance been taken of the inadequacy of physical and chemical tests alone to assure therapeutic potency and efficacy of drugs? I know this will be more fully dealt with by other witnesses today.

I submit, Mr. Chairman, that the committee should obtain satisfactory answers to all of these questions before approving this legislation.

May I just in closing, Mr. Chairman, make one statement in connection with the proposal for a drug information service? I understand that there has been something in the order of \$400,000 devoted to beging studying and planning for this in the current session, and this likely will be increased, perhaps doubled, in another year. I wonder if the committee are aware that there is available in Canada now a publication which could very well serve as a nucleus for such a drug information service, a publication which has been available now for some years by the Canadian Pharmaceutical Association. It has been my privilege to be editor of it. It presents in unbiased form the prescription drugs which are on the Canadian

market today. We have a good strong advisory panel with competent medical advisers as well as pharmaceutical advisers. This publication could serve as a nucleus. It could be expanded with very much less money expended per year by the Government than even the \$400,000. I suggest, Mr. Chairman, that this is something the committee might give consideration to as a means of doing two things: first, meeting the objectives of the drug information service, and, secondly, saving the taxpayer perhaps considerable money.

Senator Walker: What is the name of this publication?

Dr. Hughes: It is called the *Compendium of Pharmaceuticals and Specialties*.

Senator Walker: Thank you.

Dr. Hughes: It is published annually.

The Chairman: Are there any questions?

Senator Walker: You mentioned the United States; have they taken any such action as contemplated in this bill today?

Dr. Hughes: With respect to what?

Senator Walker: With respect to patented drugs.

Dr. Hughes: Not to my knowledge.

Senator Walker: Nothing like that has been undertaken. Would you say they have a modern up-to-date system of surveillance?

Dr. Hughes: That is my impression from across the border.

Senator Walker: And the fact is that the research that is now under way in pharmaceutical post-graduate work will be stultified because there will be no incentive.

Dr. Hughes: That is our feeling.

Senator Walker: Would you just say why?

Dr. Hughes: If there are no outlets for the graduates, the number of applicants will dry up and finally they will go elsewhere to be employed.

The Chairman: There is a question I want to ask, Dr. Hughes. In view of the fears expressed by Dr. Ferguson and by yourself as to what may be the results or the lack of results in this situation, would you support, for instance, a time limit in the bill when the whole subject matter of the operation of this bill might be reviewed? Would you support,

for example, a period of three years or whatever it might be?

Dr. Hughes: Yes, that would certainly be much preferable to not having a time limit at all.

The Chairman: Any other questions?

Thank you very much, Dr. Hughes.

Now we have Dr. Marvin Darrach, Professor and Head of the Department of Biochemistry, University of British Columbia, Member of the Medical Research Advisory Committee, National Medical Council of Canada.

Dr. Marvin Darrach, Professor of Biochemistry, University of British Columbia: Thank you, Mr. Chairman and honourable senators. Dr. Pernarowski, Dr. Ford and myself are from Vancouver and we are very grateful for the opportunity of being here to express a scientific point of view which we hope may be of some assistance to you in your deliberations. My friend, the Honourable Mr. Basford, is from my home town and he knows I cannot speak on the economic aspects of this bill, nor, indeed, do I intend to.

It seems to us that the main purpose of this bill is to increase the number of suppliers of drugs in Canada. It raises a question whether the Food and Drug control is adequate to protect the physician and his patient against the large number of new drugs to be expected on the market when this bill comes into force. Now there has been no question at all about the concern that the Canadian Government and its members and agencies have had in these matters. We have had the Harley Report, Dr. Chapman, the Honourable John Turner and the Honourable Mr. Basford who have all expressed views that we must guard very carefully the welfare of the Canadian so far as the safety and efficacy of new drugs are concerned. The new drug development program worked out by the Food and Drug Directorate is, in my opinion, an excellent program in that it assures the physician and his patient that new drugs appearing on the market are well studied before they are sold. Now included among those studies are the chemical assays that Dr. Chapman has referred to, and we must remember that Food and Drug assays are primarily chemical assays; they do not very often get involved with biological testing and not at all with clinical testing, and when the new drug has appeared it is well controlled. But it is at the stage when the new drug is no longer a new drug or

when a licence to manufacture a patent drug is offered that we feel a dangerous element is introduced without adequate precautions. That fact is that a new drug, once it is no longer a new drug, can be made by any manufacturer and he can sell it without informing the Food and Drug Directorate, I understand, for a period of 30 days. At that time he must notify the Food and Drug Directorate that he is in business. But it seems to me that some mischief could be done during that period.

As a medical school teacher it seems strange that it takes us 8 years to graduate a physician before he is enabled to prescribe a drug and it takes 4 years to train a pharmacist before he can see to it that the correct drug arrives at the patient's bedside and yet anyone can manufacture drugs without biological or clinical surveillance from the Food and Drug Directorate. Therefore, while the Food and Drug Directorate has good control over new drugs, we believe there is danger when the new drug status is lost. These dangers have in certain respects been illustrated or can be illustrated by quoting the words of Dr. Chapman when he points out the difficulty his department has in testing all the available batches of drugs on the Canadian market. He points out that there are 500 manufacturers of over 30,000 different drug preparations in a wide variety of dosage forms on the Canadian market. He goes on to say:

No information is available on the number of lots or batches of each drug produced each year by each of these firms. It is clearly evident, however, that it would require many times the present resources of the Directorate to conduct limited tests on each lot of drugs to confirm compliance with label claims alone. Therefore, under our present legislation which does not limit the number of pharmaceutical products which may be placed on the market, the responsibility for the quality, efficacy and safety of a drug must rest with the manufacturer.

Senator Walker: That is the situation at the present time.

Dr. Darrach: Yes.

Senator Walker: And this will now be greatly multiplied.

Dr. Darrach: This is the point that will be enhanced and very much so. As Dr. Chapman has said:

We have been extremely fortunate in Canada. There have been no catastrophes involving the quality of drugs...

In other words we have not had any drug tragedies in Canada. However, he has also pointed out that there have been situations in Canada which had potential for serious consequences.

At various points in my brief I refer to the very important scientific fact that drug products indicating the same dose on the label may not be clinically equivalent. Products that test for chemical equivalency according to the official assays may not be biologically equivalent i.e. they may not give the same blood levels and may, therefore, not have the same clinical effect. This scientific fact is of great importance. We would like to emphasize the need for regulations to be adjusted or for the act itself to be adjusted to make it mandatory under law for the second manufacturer, the man who obtains the licence or a subsequent manufacturer of old drugs to prove to the Food and Drug Directorate with something similar to a new products application wherein he assures Canadians that the drugs will be as potent and as clinically effective as the original.

It was this concern that prompted Dr. Pernarowski, Dr. Ford and myself to send a telegram to the committee that had this under consideration on another occasion in which we specifically recommended that the bill should be amended to include a section which would make it mandatory that a manufacturer be required to file a new product application which would be a modified new drug application describing the drug being marketed. We went on to say:

Although this is implied in the current definition of new drug, we feel that it should be clearly stated in law. The objective of this type of application would be to make certain that new formulations by different manufacturers actually produce similar and safe therapeutic effects.

These views are not unique; they have been the recommendations of former government committees. The Hilliard Report in July, 1965, recommended that a compulsory licence only be granted after study of the drug has assured the officials that the drug is to be effective.

The Boyd Report in 1966 went further and suggested that the product of the second and

subsequent manufacturers should each be required to meet the regulations on new drugs.

The Harley Report, which has been quoted in the development of this bill, also suggests that the granting of a licence under the Patent Act be dependent upon the recommendations of the Food and Drug Directorate.

And, finally, the Canadian Drug Advisory Committee, in September, 1968, unanimously approved a motion:

That the Canadian Drug Advisory Committee express to the Honourable, the Minister of National Health and Welfare its Regret that Bill C-102 has been introduced without, in its opinion, adequate safeguards to ensure the quality of all drug products sold in Canada.

In conclusion, Mr. Chairman, and honourable senators, I would just like to bring two thoughts forward. The first is that there is an error in logic that has occurred in the development of Bill C-102, as reflected in the words of the Honourable John Munro, when he stated:

I referred previously to the fact that drugs which meet official standards may be expected to show therapeutic equivalency.

This is an incorrect statement. It should read:

...drugs which meet official standards may or may not be expected to show therapeutic equivalency.

Secondly, it has been and may again be stated that the precautions we advocate are already afforded the Food and Drug Directorate to enforce under the Food and Drugs Act. However, having the discretionary authority to do something and being required to exercise that authority under law are two different things. We ask only that, under the new circumstances to be created by Bill C-102, the necessary precautions to assure safe and clinically effective drugs be written clearly into Bill C-102, thus assuring under law that the Canadian physician and his patient are protected against the possible tragic consequences of unsafe or clinically ineffective drugs.

The Chairman: In what you have said, did I understand this? Let us assume this bill becomes law and a compulsory licence is granted in relation to an existing patent. Is the view you express in your recommenda-

tion that at that stage the licensee who holds a compulsory licence should be required, as a matter of law, to clear that drug that is covered by this licence with the Food and Drug Directorate, on the same basis as if it were a new drug?

Dr. Darrach: That is correct, sir.

The Chairman: And the reason for that?

Dr. Darrach: The reason for that is that in many instances one manufacturer's product might be quite different from another, even though they analyze exactly the same in the chemistry laboratory.

There is one excellent illustration of this, if I might speak to this question, in a publication in the Canadian Medical Association Journal of 1960. At that time the Frosst Company of Montreal had changed its die for compressing dicumarol tablets. This is an anti-coagulant, and this change in die resulted in a tablet not nearly as effective as the former preparation. Many medical complaints came in. Then they went back to the old type of product, and people were getting too great an activity—and dicumarol can be a dangerous drug. Some patients were bleeding heavily.

Dr. Lozinski, who was a respected Canadian scientist, at that time pointed out the following facts—and this is the reason I answered your question the way I did:

From this experience at least two lessons have been learned with respect to dicumarol, and this probably holds true for other drugs of poor solubility and absorbability:

1. *In vitro* data cannot be used to interpret what may happen *in vivo*.

That is, the chemical tests in the test tube do not indicate what is going to happen in the patient.

2. Different brands of products, although similarly labelled with respect to active ingredient content, may not provide similar physiological responses.

These are scientific truths we would like to bring to your consideration.

The Chairman: Having made this reference in answering my question, is the conclusion you are suggesting that if the new drug procedure was applied in respect of a compulsory licence, these situations to which you have made reference might be avoided?

Dr. Darrach: I believe they would, because the Food and Drug administration would then have information they now do not have—that is, information about the blood levels of a new product. I am not suggesting a second manufacturer should be required to go through all of the necessary clinical trials to develop the efficacy of this drug, because it has already been done, but I think that he should assure all of us his product is going to produce blood levels or excretion levels that are going to make it quite likely the drug is effective.

Senator Walker: Is there no provision for that? Can a licensee come along without having the department go through the tests?

Dr. Darrach: There are three types of test: the chemical tests in the U.S. Pharmacopoeia and the British Pharmacopoeia—and these are carried out in Dr. Chapman's laboratory. A tablet will contain 100 milligrams if the label says it does, but there is no assurance it is going to control or cure our disease. These tests are not done, and we say they should be done by any second manufacturer who is going to make money out of selling these products.

Senator Sullivan: Professor Darrach has prepared a brief. Might we have permission for the brief to be circulated among the members of the committee?

The Chairman: Would you be prepared to leave copies with us?

Dr. Darrach: Yes, I would be glad to, if I may.

The Chairman: Honourable senators, we have several more witnesses. We have Dr. George F. Wright, Professor of Chemistry at the University of Toronto. In 1947 he entered into the practice of Chemical Consultant in diverse chemical fields, including that of pharmaceutical patents.

Dr. George F. Wright, Professor of Chemistry, University of Toronto: Mr. Chairman, honourable senators, I feel rather out of place speaking here, in view of my reputation in the past, at least among some people, that I am a patent destroyer or a patent buster and that, therefore, it would seem rather peculiar that I would be here.

The Chairman: You might be in the company of some trust busters.

Dr. Wright: Actually, my reputation is ill-deserved. I know, from looking at my knowledge of this field, that there are two types of drug patents: there are good drug patents; and there are bad drug patents. My interest has been in busting bad drug patents. But when a patent is written in such a way as to cover the product or the process presenting only new medication, that I respect. When it is written in such a way that the patentee has become too greedy in his claims, then I have no respect for it. When I have respect for it, I know how much effort, how many failures and attempts went into that. Then I consider it is a property that should not be expropriated, unless there is very good reason, for the benefit of the public.

In examining Bill C-102—and I must make the point that I am a chemist, I am not a lawyer, and therefore a cat that can only look at the work of kings—as I look at it I find it like many of the patents to which I object. We call objectionable patents “fishing expeditions”. You may know the expression. It is unfortunate that this has to be true in many respects. I do not think it will happen in my lifetime, but eventually it will have to be revised. Our patent law is for mousetraps, and there are many new and more complicated mousetraps today. A pharmaceutical patent covers the discovery of a new therapeutic material. The way it has to be worded according to our Patent Act is in terms of the product, and in many respects in terms of the processes by which it is made. For this reason we have bad patents, not because we have bad people writing patents but because they have to use a method that does not fit our present scheme of existence.

With this problem of having to use the patent law to bring something new and valuable to the public, when we examine Bill C-102, here too we find a fishing expedition surmounted on the ordinary fishing expeditions. Quite frankly, I do not know what this bill will do, except that as I read it it will create great confusion in the industry and that confusion may very well lead—in fact I strongly suspect that it will lead—to higher prices rather than lower prices for drugs. This is a shame, because for all the talk we have heard in the last few years, an inspection of drug prices shows that they have been continually decreasing since 1957, and especially since 1964. Anything that interrupts this orderly process will, in my estimation, do more harm than good.

Now let us see some of the characteristics of this bill as I read it. I may be wrong, because I am not a lawyer. Let us take section 1(4)(b), which says:

where the invention is other than a process, to import, make, use or sell the invention for medicine or for the preparation or production of medicine.

Does this mean that as an applicant for a compulsory licence I can go into the inventions selling business? That is what the wording says.

Lower down the page, at line 25, the legislation of Bill C-102 and of Bill C-190 and of the Patent Act of 1923, has been changed imperceptibly, perhaps for the better, by saying that the Commissioner will try to insure that the public gets the medication

at the lowest possible price consistent with giving to the patentee—

not the inventor, as it was before—

due reward for the research leading to the invention.

Perhaps this is fair, because when it read "giving to the inventor", this was the fellow down on the bench, who was getting a salary and a bonus; maybe he deserved a little more, but not very much more. Now this is to the patentee who has made the entire investment. The patentee will most certainly bring this more strongly than he could ever do before under the former act to represent what his reward should be. I submit that if Mr. Laidlaw, the Commissioner, has to go through all those arguments within six months, during the same time that the Food and Drug Directorate are going through the arguments in the same six months, multiplied by all the people who will apply for these licences, without a very close knowledge of how they will work, this country will be in utter confusion with respect to its pharmaceutical industry.

I cannot comment any further on this, because it has been spoken about before, but as a person who likes to live in a country governed by laws rather than by men, I object to, or at least am somewhat disturbed by, "such other factors as may be prescribed".

I would refer next to the question of interim licences, dealt with in subsection (5). I do not know how carefully this has been noticed, although I suspect many firms will have seen this point. It says:

At any time after the expiration of six months from the day on which a copy of

the application to the Commissioner pursuant to subsection (4) is served on the patentee.

Not when it is received but when it is served on the patentee. I think the Commissioner of Patents will be extremely busy if this bill passes. I wonder how long it will take him to get the notice to the patentee? Unless, of course, the Commissioner's department is magnified with a somewhat larger appropriation. I know who will pay for that.

The Chairman: They could send the patentee a registered letter, could they not?

Dr. Wright: They could, but the act says nothing about that.

The Chairman: Any method by which the notice would come to the attention of the patentee would be supported under the bill.

Dr. Wright: There is nothing in here that says the Commissioner must do that.

The Chairman: Not, not "must", but he has the choice.

Senator Walker: I think the witness means there is no time limit, that the man can keep stalling for anytime.

The Chairman: It says "in prescribed manner", and I suspect the regulations would prescribe the method.

Dr. Wright: That is if he has enough help. He looks it over to see whether it is trivial, so what the six-month period may amount to I am not at all sure.

Another thing the Commissioner is required to do is to notify the Food and Drug Directorate and any other government agencies that he may see fit. We do not know what those other agencies are, but we do know what the Food and Drug Directorate is. So, he now has his power limited by the reference to the Food and Drug Directorate. Perhaps this is good, too, in principle, but in practice, of course, it means that another group operating under another act is controlling the patent law in the country.

Now, there used to be a principle many centuries ago in English law which took a very dim view of this, and, in fact, the Monopolies Act, I think of 1624, pronounced the opinion of civilization as it was then and has been since to the questionable practice of Government in this manner.

The Chairman: Dr. Wright, I was interested in the question you raised about another check on the operation of the patent. But under the law as it presently exists, without looking at Bill C-102 at all, if you secure a patent for a process for producing a medicine or for the product, you are still not free to sell it.

Dr. Wright: That is true.

The Chairman: So that existed under the present law. To that extent Bill C-102 does not import anything more on that point.

Dr. Wright: That is quite true, but, as I read this act, the granting of a licence is dependent on the opinion of the Food and Drug Directorate. This is quite aside from the five-year period in which the Food and Drug Directorate will have control of this afterwards.

The Chairman: That may be a matter for argument. I am just wondering where it says in this bill that the Food and Drug Directorate must approve before the licence is granted. I would say, certainly, even if a compulsory licence is secured, the more serious question arises as to whether they should then clear with the Food and Drug Directorate, if the product has not already been cleared.

Dr. Wright: My point is that this reference to the Food and Drug Directorate prior to the granting of a licence may have very great benefits. It is an informal way of handling this situation in the best possible manner, except for the fact that the Food and Drug Directorate has now two functions.

I have great respect for the Food and Drug Directorate and I am very proud to have come to this country in which we have a Food and Drug Directorate second to none in the world. I want it to stay that way. I consider the Food and Drug Directorate to be, in its proper function, a police force. Also, as modern activities go, it has an educative function and I think this is good because it makes administration easier. That I consider to be a full-time job, and, if one is passing on the possible surveying of plants in all parts of the world, then I question whether it is wise. This is not only a matter of appropriation—and mind you the Food and Drug Directorate in my experience utilizes the funds allocated to it very well—it can also be a matter of personnel. In my position as Professor of Chemistry I am continually getting from the Civil Service requests for applicants, and I

know Dr. Chapman is very busy trying to find new people, otherwise they would not be printing these applications.

He is going to run out of competent people pretty soon, if this situation magnifies to too great an extent.

So I say perhaps Bill C-102 does not cut the suit to fit our cloth.

Now, the other feeling on this is a very personal one. Perhaps it does not apply here. Certainly, Mr. Turner, in reply to a letter I wrote, said it was not significant, but it is the idea I have had, during the 35 years I have been in Canada, of building a Canadian pharmaceutical industry.

Somehow I guess I believed Laurier when he said this was the century for Canada.

The Chairman: There are still some people left with that view.

Dr. Wright: There may be a bit of miscalculation here, but one of the things I would like to see is Canada having its own chemical industry, and one of the best ways to commence a chemical industry, according to past history, is to start with the fine chemicals industry.

Now, I would point out that patent laws can be very important to such an industry. One of the most highly reputed and renowned pharmaceutical houses in this world is that of Hoffman-La Roche. Companies of that sort commenced their activities in countries which had very stringent protective patent laws that enabled them to build up their industry. But what are we trying to do? We are trying to do that sort of process in reverse, and I say we will never have a chemical industry worthy of the name so long as we try to emasculate it with things like this bill. I think that is all I have to say. In other words, I leave the stand angry.

The Chairman: Thank you very much. The next witness is Dr. Pernarowski.

Dr. M. Pernarowski, University of British Columbia: Mr. Chairman, honourable senators, the stated objective of this bill is to lower the price of a selected category of drug products. There is, of course, an economic component in this legislation but, at the same time, the safety-efficacy implications of Bill C-102 should be carefully considered. Others may wish to assess the economic implications of this legislation; I will comment only on the safety-efficacy aspects, not only because these

are of vital importance to the consumer but because I have been interested and professionally involved in this area of pharmacy since 1952.

Much has been written about the differences between the "branded" and the "generic" drug products. It is possible, by using data accumulated in my laboratory during the past several years, to prove that the branded is better than the generic product or that the generic is better than the branded product. These proofs depend on how one defines the two words and are, therefore, meaningless. The real issue here and in other related legislation is whether one accepts or rejects the tens of thousands of scientific observations on the biopharmaceutical properties of dosage forms.

The word "biopharmaceutics" may be defined in a number of ways but the best definition I know is the one given below, which is not only all-encompassing but also self-explanatory:

Biopharmaceutics may be defined as the study of the influence of formulation on the therapeutic activity of a drug product. Or, it may be defined as the study of the relationship between some of the physical and chemical properties of the drug and its dosage forms and the biological effects observed following the administration of the drug in its various forms.

It may be defined in a number of ways, but the best definition I know is the one given by Dr. John Wagner of the University of Michigan—and incidentally Dr. Wagner is a Canadian in that he has never given up his Canadian citizenship,—and while the definition is rather a long one the essence of it is as follows:

...biopharmaceutics encompasses all possible effects of dosage forms on biological response, and all possible physiological factors which may affect the drug contained in the dosage form and the dosage form of the drug itself.

This definition is, of course, general and does not cover specific problems or products. I will, therefore, quote from papers presented at the November, 1968 and the May, 1969 meetings of the APhA, namely the Academy of Pharmaceutical Sciences and the Drug Information Association Conference which was held in Washington in April of this year. I do this to illustrate what biopharmaceutics

is all about. I quote again from a paper read by Dr. Wagner which was entitled "Some Experiences in the Evaluation of Dosage Forms of Drugs in Man". The portion I want to quote is as follows:

... The data... (based on twenty-six carefully controlled clinical pharmacology studies) ... emphasize the following, (1) Pharmaceutical adjuvants...

and those are ingredients other than the active ingredient which goes into the dosage form...

... present in dosage forms of drugs, may have a marked effect on the drug's absorption; since these adjuvants are not specified in official monographs, the concept of a "generic equivalent," based on a U.S.P. ...

which is the United States Pharmacopoeia...

... or N.F. monograph, is rather a foolish one. (2) There may be marked differences in absorption of a drug when it is administered in two or more different dosage forms by the same route of administration. (3) Simple pharmaceutical processes may markedly alter a drug's absorption presumably by altering the rate of release of the drug from the dosage form *in vivo*...

It is obviously impossible to present all the results here but I will quote from two other parts of this paper:

... In several studies, small amounts of the synthetic sweetening agents, sodium or calcium cyclamate (Sucaryl) were shown to reduce the absorption of the antibiotic lincomycin hydrochloride to 25 to 30 per cent of control values obtained in the absence of the agents...

In other words the casual addition of sweetening agents lowered the drug absorption to about 25 to 30 per cent.

In another paper presented to the same scientific group, Dr. A. B. Varley—and this was also presented to the same November meeting—said this:

... Two lots of tolbutamide tablets were tested. One lot was... Orinase tablets.

This is the brand name of the Upjohn product.

... The other lot was identical in all composition and manufacturing respects except for halving of the amount of the disintegrant used.

All tablets contain disintegrants; the only difference between the two is in the amount of disintegrants used.

... Both formulation completely met the tolbutamide specifications of the U.S.P. A double-blind, crossover clinical study was arranged in which ten healthy, non-diabetic, volunteer subjects received both formulations of the drug. Blood samples for sugar and assay of drug were drawn at 1½, 3, 5 and 8 hours after drug administration... Each subject, at each sampling time, had a higher serum tolbutamide level after receiving .. Orinase tablets... The area under the average drug serum concentration curves ... was 3.57 times greater following ... Orinase. ... The area under the average serum sugar concentration curves ... was 2.09 times greater (less sugar) for ... Orinase.

Dr. Varley's paper ended with the statement that:

Criteria for establishment of equivalence cannot be made by chemical and physical standards as they are now established in the U.S.P., unless one is not interested in the patient therapeutic response that interests most physicians.

Dr. W. H. Barr, in a paper entitled "Physiologic Availability of Three Commercial Tetracycline Preparations", which, incidentally, has not yet been delivered although it is public knowledge it will be delivered next Friday at the Academy meeting, says:

The cumulative amounts of free drug excreted in 72 hours following administration of 250 mg of each product in a 9 subject complete crossover study was 159 ± 26 mg. for A, $117 \text{ mg} \pm 40$ mg. for B, and 116 ± 37 mg. for C.

In other words, there were significant differences between products A and B and C. These observations are similar to those reported by Dr. H. MacDonald and his co-workers. This was shown in the paper given in Washington in April of this year. They found that there was a 3 to 4 fold difference (based on in vivo data in 12 subjects) between Achromycin and some of the other brands of tetracycline HCl studied.

Now it would not be too difficult to document many similar observations. In actual fact, every issue of every pharmaceutically important scientific journal contains papers which deal with the types of problems

outlined above, that is with the pharmaceutical problems of creating dosage values. The consumer does not read these journals and has been told that the efficacy problem has been studied in depth by various committees, such as, for example, the U.S. Department of Health, Education and Welfare's Task Force on Prescription Drugs and that the reports of these groups have been unanimously accepted by the scientific community. With respect to the Task Force mentioned above, the prestigious Academy of Pharmaceutical Sciences withheld its approval of their interim report. As I have said, the Academy is meeting in Montreal now, and their report on this task force report should be ready to-morrow. Moreover, the equally prestigious and important Drug Efficacy Study Committee of the National Academy of Science-National Research Council—and this is a group appointed to advise the Food and Drug Administration in Washington on the safety and efficacy of drugs—has now prepared a white paper on this subject. Again unfortunately the report is not going to be available until June. But Dr. T. H. Hayes, in his testimony to the Nelson Committee, said that this Committee has concluded that standards of chemical identity for generic drugs may be inadequate.

Dr. Alfred Gilman, chairman of the Drug Efficacy Study Committee and one of the world's outstanding pharmacologists, said, when asked to comment on Dr. Hayes' statement that—"It is essentially correct. As a matter of fact, Dr. Hayes' statement is fairly mild. We're a little more positive in our recommendation."

Biopharmaceutical factors are, therefore, of vital importance and cannot be disregarded by this or any other legislature. This means that it is essential that the government recognize this in its legislation by spelling out a new category of drug products, that is those products which must be reviewed under a modified set of new drug regulations. In other words, we must recognize, in law, the necessity of a careful review of all drug products entering the market place because of this legislation. Drugs will become more potent. Their chemical and physical characteristics will be such that it will be impossible and dangerous to prove efficacy by means of the type of drug testing now described in the compendia. I have seen several instances of this in approximately the last two or three months. I know of three experimental drugs so highly insoluble that I do not think that

anything other than a biological evaluation will prove that they are effective. Therefore we cannot and must not take a negative approach to this problem. This type of approach to safety and efficacy was a characteristic prior to the days of thalidomide. It produced little protection then; it will produce the same amount of protection now.

Claims have been made that part of this safety-efficacy problem can be covered by inspection of foreign plants. Such inspections are feasible. We do not have to admit a drug product to this country unless the manufacturer admits a Canadian inspector to his plant. May I, however, point out to this committee the implications of this type of inspection. We are saying, in effect, to the Government of Switzerland or Italy or any other country which exports drugs that "we do not like your drug control laws or do not trust your drug plant inspections." The Food and Drug Administration in Washington has taken an alternative approach. The following quotation may be of interest to this committee. It is drawn from the Journal and is again very recent:

In what could be a milestone in regulatory affairs, the FDA...

This is Washington.

... and its Swiss counterpart, IKS (The Intercantonal Office for the Control of Medications), have agreed to trust each other's inspections and procedures—thus sidestepping the tacky diplomatic problem of precisely how (or whether) FDA inspectors were to be allowed to inspect Swiss drug plants that ship active ingredients to the U.S.

I would suggest, therefore, that we move with care in this particular area. To insist on a casual inspection at long time intervals will contribute nothing to drug safety and efficacy. To insist on comprehensive inspections at short time intervals may damage our prestige and increase both governmental and industrial costs to the point where this legislation will become meaningless.

Lastly, I would like to say a few words about full disclosure. By law, certain types of information must appear on drug labels. There is, however, one aspect of full disclosure that has been overlooked. The name and address of the manufacturer of some of the drug products sold in this country does not appear on the label of the container. The reason for this is that the word "manufacturer" is so defined in the regulations appended

to the Food and Drugs Act that distributors are classed as manufacturers. In other words, a man may buy in bulk from any source, repackage it, put his name on it and claim he is a manufacturer, and this is not the dictionary definition of the word. It is my belief that the place of manufacture and the name of the manufacturer should be part of the label declaration. Those who must prescribe or distribute drug products which are manufactured in other countries have a right to this type of information.

These, then, are some of the thoughts I have on this bill. I know of no officially recognized professional organization which would not agree, in principle, with what I have said. The scientist in the university, in government, and even in industry may not always agree with the pricing, sales, or promotional policies of individual manufacturers, but all will insist on safe and effective drugs. It is now up to this committee to decide if this bill will pass as is or in some modified form.

Thank you very much.

Senator Sullivan: Mr. Chairman, might I mention that these outstanding scientists left an important meeting in Montreal to be here with us this morning?

The Chairman: Yes, thank you.

Are there any questions?

We have two more witnesses. Shall we continue for a while?

Hon. Senators: Agreed.

The Chairman: The next witness is Professor Walker, Professor of Pharmacy at the University of Toronto.

Professor G. C. Walker, Professor of Pharmacy, University of Toronto: Mr. Chairman, honourable Mr. Basford and honourable Senators: As have others, I think you very much for giving me the real privilege of appearing before you in connection with this bill. You have had many excellent presentations in the past on this subject, and particularly this morning, and I am sure that there is little I can add. However, there are one or two areas of personal and professional interest in connection with this bill which I feel require some comment, and with which I have had some contact, in particular over the last few years—that is, the pharmaceutical preparation and quality control. Dr. Darrach

has referred to it, and I am afraid that my presentation is much as was Dr. Darrach's.

There has been much activity in these directions recently, and particularly with reference to physiological equivalence, drug availability and the quality of pharmaceuticals. A number of meetings have been convened—for example, the Quality Assurance of Pharmaceutical Products by our own Directorate, and the one referred to previously, that of the American Academy of Pharmaceutical Sciences on Physiological Availability, and I had the privilege of attending the meetings. As you know, the Canadian Directorate is sponsoring a Physiological Equivalence of Drug Dosage Forms meeting in June of this year in Ottawa. All of these meetings have, in part or *in toto*, observed the influence of the pharmaceutical preparation on therapeutic performance, and my comments here are concerned with the general tone of these meetings and with some of our own experiences relevant to Bill C-102, as far as importation of drug products is concerned.

If honourable senators will bear with me, a little history may be useful. In the mid-1950's the Food and Drug Directorate of Canada, through a number of researches, made it clear that solid sugar-coated dosage forms of riboflavin and of para-aminosalicylic acid with unsuitable disintegration times—that is, the time it takes to break up into particles so we feel we would get it in our stomachs—did not provide the patient with the drugs concerned. The results shook up the pharmaceutical world and, as you may imagine, there was much controversy. It did, however, spark the release and availability concept which we hear so much about, and led to the stimulating research and thinking of Dr. Nelson on pharmaceutical formulation and drug solubility, and this in turn followed by the equally exciting research of Doctors Levy and Wagner.

The researches brought forward the fact that the design of the pharmaceutical preparation, and the standards associated with it, are critical in providing the response desired, and required, by the physician. Dosage form constituents modify absorption rate and absorption of drugs and thus modifies the onset of activity, intensity of response, peak response, duration of response and total drug absorption, in addition to their very real influence on the overall quality of the product concerned.

Faulty formulation of dosage forms resulting in reduced biological availability of active constituents—that is, whether a patient does or does not get the medication—is a serious problem because it may cause patients to be unmedicated on a dosage regimen thought to be adequate by the physician who prescribed it.

The pharmaceutical dosage form or preparation, then, is a much more comprehensive entity than its simple physical form would indicate, and involved the chemical nature of the drug, the physical state, particle size, surface area, presence or absence of excipients—and Dr. Pernarowski so aptly puts these under the term “biopharmaceutics”, a term coined some years ago by Dr. Levy. Any or all of these may have a marked effect on the therapeutic efficacy of the drug by modifying release, availability and absorption, or, in other words, the clinical and pharmacological efficacy of the preparation with which the patient is challenged. These concepts do not include the actual manufacturing process itself which may markedly influence the physical, chemical and biological results secured with that dosage form.

The foregoing suggests that all dosage forms are not the same. In fact, ladies and gentlemen, they may be far from it, and it may perhaps emphasize the magnitude of the problem concerned in bringing to the consumer—and the health of these consumers, the Canadian people—the best drug product.

The problem may be over-emphasized as far as availability is concerned, since drug products of low water solubility have been the principal offenders; but all are entirely immersed in the matter of quality. The literature contains a large number of cases of proven inefficacy therapeutically with a wide variety of drugs, and this is outside of the large number of instabilities and incompatibilities reported.

Time and space will not permit the presentation of specific cases, but one reviewed at a recent symposium is particularly pertinent. At a recent symposium a patient on tetracycline of one brand was changed to another product. The patient complained about the side effects of the new dosage form. A study showed that little or no drug was being released from the original product, and consequently the side effects of the tetracycline were eliminated. One wonders what would result if it were possible to investigate thoroughly the thousands of dosage forms on the

market. We just do not know what is the actual situation.

There is no question overall but that the drug itself and the drug in the dosage form present many problems, aside from the inherent variability in the human as far as absorption, metabolism, distribution and excretion are concerned. In addition, the many physical and chemical factors involved in the purity and standards associated with pharmaceutical preparations are of concern and go with the release and availability theme to present the large task of "total quality control".

The matters of efficacy and stability are not only of concern with oral products such as capsules and tablets, of which we hear the most, but apply equally to such pharmaceutical preparations as ointments, lotions, suspensions, solutions, suppositories and others. I am sure honourable senators would be surprised to see some of the products that have appeared on the Canadian market from the microscopic point of view alone, and I am equally sure that my colleagues in the universities, the government and the industry could also conjure up some interesting visions from their experience.

These brief remarks, honourable senators, are made to emphasize the importance of safety and quality, of standards and controls in compulsory licensing for the importation of any drug or drug product. We are quite familiar with the excellent job the Food and Drug Directorate is doing in the task that lies before them, and I feel exactly as Dr. Wright expressed it. However, the directorate must assure the Commissioner of Patents prior to the issuance of these licences, if such were to go through, of a number of matters, and I can do no better than refer to and support the conclusions in *Debates of the Senate* of April 24, as presented by the honourable Senator Joseph A. Sullivan. I will not go through them. They are listed here from one to eight. No. 8, of course, embraces the very important concept that the samples are satisfactory with respect to identity, purity, uniformity, safety and efficacy. To do these things would entail considerable expense, and I fail to see how the cost of drugs will be reduced.

Equally concerned in the matter of importation of drugs is the Canadian pharmaceutical industry. The efforts of this industry are well known. It is this industry that has assumed a major role in bringing drugs to the people of this country. Indeed, without them what would the practising physician do? A

healthy pharmaceutical industry is important to the health of the nation as well as, I believe, to its economy. However, I realize I am presumptuous in saying such a thing to this body.

There should be close liaison between the Food and Drug Directorate and this industry. Such, I believe, does exist and has been mutually advantageous to all concerned. However, it must be encouraged and further strengthened in the light of new developments and the increasing emphasis being given to drugs. The pharmaceutical industry has always willingly opened its doors and lent its hand when government has asked. On the other hand, the grave responsibility of government in making sound regulations, which are indeed most binding, cannot be over-emphasized. In a somewhat impartial position, I must say that each side is doing a very fine job. The pharmaceutical manufacturers of Canada must communicate and co-operate and achieve a better understanding of the problems peculiar to both large and small companies. Such developments as this can only lead to tolerance and understanding between all concerned.

It should also be stressed that research co-operation with the pharmaceutical industry is important to both universities and government. Stimulation of research development in the industry and the university, both individually and collectively, should be encouraged. Lack of such encouragement in this industry or in the development of the industry could have a deleterious effect on the employment of Canadian graduates, and undoubtedly on research development and support.

I thank you very much, honourable senators and Mr. Chairman, for allowing me to appear and speak to you at this time.

The Chairman: Honourable senators, there is one question I want to put to you at this time. I notice that the hour is a quarter to one. It can be understood that at this time the human frame puts out an appeal for some sustenance. We have one witness left, Dr. D. K. Ford, who is the Associate Professor of the Department of Medicine, the University of British Columbia. I was going to suggest that maybe we should adjourn until 2.15 and then hear Dr. Ford, if that is suitable to him. Is that satisfactory, doctor, or have you transportation difficulties?

Dr. Denys K. Ford, Department of Medicine, University of British Columbia:

Whichever you prefer, Mr. Chairman. I could deal with it in about three minutes, I think, if you could stand it now.

Hon. Senators: Now.

The Chairman: Let us deal with it now.

This witness, as I have told you, is Dr. Ford, who is also Chairman of the Pharmacy Committee of the British Columbia Medical Association, the Vancouver General Hospital, the Drug Advisory Committee to the Department of Welfare of the British Columbia Provincial Government. Do not feel we are pushing you, doctor. We gave you the choice.

Dr. Ford: Mr. Chairman, honourable senators, I think the main message can be stated quite briefly. I am a rheumatologist, I specialize in rheumatic diseases. One of the drugs we use is phenylbutazone which is an effective drug. At present there are 20 or more manufactured phenylbutazones on the market. As I understand it, only one manufacturer out of the 20 or more has to prove that his product is effective, and that manufacturer is the original producer, who has to produce technical evidence that he has an effective product that is clearly defined, unadulterated, of specified toxicity and effective when given in a particular way.

Senator Benidickson: He proves that to the federal department?

Dr. Ford: To the Food and Drug Directorate, yes. The other 19 do not have to prove they have a satisfactory product. At the moment this is merely subject to the policing activities of the Food and Drug Directorate. Only one of the producers has to prove that he has an effective product.

Senator Thorvaldson: Why is that? What is the reason?

The Chairman: Under the food and drug regulations, as a new drug it must be cleared through the food and drug administration in order to be marketed, but the moment it is cleared and marketable, any product that meets that description can be marketed, that is as we understand it.

Senator Thorvaldson: Without proof that it meets the description?

The Chairman: Without in each case bringing the product from each manufacturer to the Food and Drug Directorate to meet the tests required of a new drug, because at that

stage as far as the department is concerned it may be said to be not a new drug.

Senator Benidickson: Does number one get the patent and then distribute it to the other 19?

The Chairman: Number one may be the one who has the patent.

Senator Beaubien: The other 19 just make it.

The Chairman: No, they may be licensed. I do not know what the procedures are.

Senator Beaubien: Do they have to be licensed?

Dr. Ford: Yes. As I say, the other manufacturer does not have to prove he has an effective product. I was not getting involved with licensing but was dealing with the policing of the product by the Food and Drug Directorate. They may inspect samples of the product but he does not have to prove it is an effective product. Perhaps I could go through quickly the last few paragraphs of my brief.

The Chairman: Yes, by all means.

Dr. Ford: The production of a drug usually requires many chemical and pharmaceutical steps, each of which may be susceptible to variability and, in addition, there may be several alternative starting materials of different origin. When a new drug is developed the innovating manufacturer has to demonstrate that his product is clearly defined, unadulterated, of specified toxicity and effective when given in a particular way. In the present Bill C-102 there is no definite requirement that a secondary manufacturer must provide proof that his product is effective and therapeutically equivalent to the original drug.

I cannot understand why Bill C-102 does not specify the requirement that secondary manufacturers must under the law demonstrate equivalent effectiveness and toxicity of their products. The burden of proof and the costs of proof should be the responsibility of the secondary manufacturer. To leave this to the discretion of the Food and Drug Directorate would seem to put an unfair demand on the Directorate which might have to operate in understaffed and underequipped circumstances and be susceptible to great pressures from outside sources.

There would seem to be no reason why a modification of Bill C-102 could not now be included to overcome the serious deficiency of the bill as it now stands. A brief amendment could specify that a new product of a secondary manufacturer must be presented to the Food and Drug Directorate under a "New Product Application" which would describe the new product and demonstrate its effectiveness and safety in comparison to the original drug.

Thank you.

The Chairman: Thank you very much, Dr. Ford.

Honourable senators, as I indicated earlier, we will adjourn until 2.15. However, I do not want to adjourn without thanking all these doctors and professors for coming here and giving us the benefit of their experience, study and research. I also wish to thank the Minister, particularly for staying during the entire period to gather the full import of the evidence which has come before us this morning.

I understand the Minister will be with us again this afternoon some time after three.

The committee adjourned.

Upon resuming at 4 p.m.

The Chairman: We now revert to our consideration of Bill C-102, and the Minister has some further comments he would like to make.

Hon. Mr. Basford: Mr. Chairman, honourable senators, I have a few informal comments to make.

The first is that I am sure we are all grateful to the doctors and experts who appeared this morning. I would like to point out that the Harley Committee heard as witnesses, in formal presentations, the Canadian Pharmaceutical Association, the Canadian Medical Association; and they heard Dr. Wright, to whom we listened this morning, first of all on behalf of the Canadian Drug Manufacturers' Association and then on behalf of Empire Laboratories Limited. The Harley Committee also heard, as part of the presentation of the Consumers' Association of Canada, Dr. Pernarowski, who was a member of that group when they presented their evidence. In addition, the committee heard Dr. Hilliard, who was mentioned this morning as the author of the Hilliard Report.

The Harley Committee heard the same expert evidence which was presented here this morning, and taking account of that evidence made the recommendations they did—namely, that the compulsory licensing provisions of the Patent Act should be amended to allow greater freedom in the granting of compulsory licences.

The second point I would like to make is that Dr. Ferguson made some remarks to which I take exception, about the political ethics of this bill, in the use of the word "expropriation" which I think is a needlessly inflammatory word. I find it hard to believe that such bodies as the Restrictive Trade Practices Commission, or the Hall Royal Commission, or the members of the House of Commons who were members of the Harley Committee, which was headed by a doctor who is no longer a member of the House and which had medical doctors on the committee, would act from a position of no political ethics, and, if I may, I take some exception to that remark of the doctor.

I would like to quote, in opposition to what Dr. Ferguson said, some of his own evidence. I would remind you that he is the director of the Connaught Medical Research Laboratories. I should like to quote some of his evidence in front of the Select Committee on Drugs of the Ontario Legislature in October, 1960, in which he was reporting on the Connaught Laboratories and the very great work that institution has done for Canada and for medical research over the years. He was quoting the annual report of the first director of the Connaught Laboratory, Dr. J. G. Fitzgerald:

The fundamental idea underlying the project of the Connaught Laboratories was the production of all sera and vaccines of value in public health work and their distribution at cost. It was expected that the active co-operation of public health authorities in Canada would be obtained and this has in general measure been realized.

Then he went on:

It was with great reluctance that Dr. Banting...

who, of course, was probably our greatest medical researcher in Canada, who was connected with the Connaught Medical Research Laboratories...

agreed to apply for a patent. He was one of those doctors—there are still many—who thinks it is immoral to have a patent

on drugs. But he was finally persuaded to do so because on knowing the situation....

The insulin patents were not initially administered by the Connaught Laboratories, but there was occasion, because of other inventions, to set up or establish a patent policy. I quote further from his evidence:

During this time, in the Connaught Laboratories a series of less important inventions were being made and a patent policy had to be evolved. The cardinal principles authorized by the Board of Governors of the university for the guidance of the insulin committee were automatically adopted by Connaught. These were stated in a report published in the *Canadian Medical Association Journal* in 1923, as follows:

Dr. Ferguson had the report in front of him and he quoted from it.

First, that the patent is not to be used for the purpose of restricting the preparation of this or similar extracts elsewhere or by other persons, and second that the University holds the patent for the sole purpose of preventing any other person from taking out a similar patent which might restrict the preparation of such extract.

I quote that to show that Dr. Banting's view and the original policy of the Connaught Laboratories was that if we had to use patents they were to be used as widely as possible, and the preparation of any patented material was to be allowed as widely as possible. That is contrary to what Dr. Ferguson argued this morning.

With regard to the scientific arguments that were raised, I made clear this morning that this is Dr. Chapman's area and not mine, but I would say I am sure we are fortunate as a country that we have the people whom we saw this morning, their knowledge and their concern about the scientific issues. The point I do want to make is twofold: First, the considerations and concerns that have been expressed about quality, about standards, about testing, about counterfeiting, about a "black market" in drugs, apply whether this legislation is passed or not, and they apply whether we have a patent system or do not have a patent system.

They are considerations which are the concern of the Food and Drug Directorate. They are not related to the patent system and they

are unrelated to these amendments to the patent system. It is for that reason that we have done two things. First, we have increased the budget and the personnel of the Food and Drug Directorate so that they will be in a better position to deal with the concerns these doctors expressed this morning. Secondly, we have taken the four measures that I outlined this morning in amendments in this legislation to ensure that the Food and Drug Directorate has complete authority, and that the Governor in Council has complete liberty to pass whatever regulations may be required to protect the safety of the public.

So, we have done two things to take account of their concerns. First, we have increased the budget of the Food and Drug Directorate. There were reservations expressed this morning about this expenditure which rather startled me, Mr. Chairman, because I thought the group we had this morning, because of their concern, would not only welcome the increase in expenditure for the Food and Drug Directorate, but would urge us to spend more money. It is not within my jurisdiction, but I would hope that the Treasury Board would allow more money.

The Chairman: I think the reservation was to spend it in a different direction.

Hon. Mr. Basford: We are giving the Food and Drug Directorate the money it says it requires to do the job it may have to do under this legislation.

The other matter is that we have made it clear in this legislation that the Food and Drug Directorate and the Governor in Council have authority to pass whatever regulations may be required.

Those are all the comments I have to make.

The Chairman: Are there any questions?

Senator Molson: Perhaps I should address this to Dr. Chapman. Does that include what I think was the tenor of the remarks of the doctors this morning, concerning the second, third or fourth manufacturer complying with the same testing as the initial manufacturer.

Hon. Mr. Basford: I think Dr. Chapman would like to make his own statement on the scientific aspects, upon which I did not touch.

The Chairman: Are there any questions to the minister on what he has added this afternoon...

Then, Senator Molson, you can proceed to put your question to Dr. Chapman.

Senator Molson: I wondered whether the ability of the food and drug administration to draw up its own regulations would include the subject of what I felt was a great deal of the objection of the doctors appearing before us this morning, that the second, third or fourth, or subsequent manufacturer or a drug under a compulsory licence would be called upon to prove that their material was as good as the original material submitted by, presumably, the patentee. At the moment I understand we are resting with a chemical analysis. Is that correct?

Dr. Chapman: Mr. Chairman and honourable senators, the question of clinical equivalency is an extremely complicated problem, and I would like to outline the situation as we see it. This morning you heard a good deal about clinical equivalency, clinical effectiveness, biological equivalency, and then the chemical and physical testing.

Senator Molson: And biopharmaceutics.

Dr. Chapman: Yes, indeed biopharmaceutics as well. What we are actually concerned about here is that any drug on the Canadian market when given to a patient is going to be effective. A number of studies have been made in this regard, and I should like to quote from one, which is from the Task Force on Prescription Drugs, the Second Interim Report and Recommendations, of August 30, 1968.

Senator Sullivan: There is one of February, 1969, in which page 34 is of interest, which I have here.

Dr. Chapman: I have a copy of that too. They say about drug policy—and I believe this applies to the question you have asked, senator:

During the past several years, the clinical equivalency of generic name products has been the center of particularly heated controversy.

This issue may be presented as follows:

... Given two drug products containing essentially the same amount of the same active ingredient—that is, two chemical equivalents—will they give essentially the same clinical effects?

This question, of increasing interest to both physicians and patients, is now under careful consideration by the scientific community. Objective research has shown that in certain instances the clinical effects may not be the same.

The Task Force has found, however, that lack of clinical equivalency among chemical equivalents meeting all official standards has been grossly exaggerated as a major hazard to the public health. Where low-cost chemical equivalents have been employed—in foreign drug programs, in leading American hospitals, in State welfare programs, in Veterans Administration and Public Health Service hospitals, and in American military operations—instances of clinical nonequivalency have seldom been reported, and few of these have had significant therapeutic consequences.

Now, in order to carry out tests for clinical equivalency of drugs, when they first appear on the market, and I am referring now to an old drug, but when it is first produced by a second or third or tenth or twentieth manufacturer, would put an impossible burden on the clinical investigator and on the companies that were required to carry out these tests. This is completely impractical. When we move back from that, we then come to biological equivalency, and reference was made to this term this morning by Dr. Darrach. This becomes a practical test that could be carried out when required, and is simply a test in which you give the particular drug to the patient and then, if it is feasible with that particular drug, you determine the levels of the drug in the blood or the urine. In this way you can get a good indication whether or not the drug is available to the body. If it is available to the body, it should have a clinical effect.

Senator Molson: That does not quite answer my question. I asked if the regulations that were suggested or under contemplation would include the requirement to complete a test such as you have just described. Is that contemplated?

Dr. Chapman: I am pleased to answer that portion of your question, senator. The legislation before us does not contemplate that. We could recommend that a regulation be passed by Order in Council requiring that a manufacturer who manufactures a drug for the first time should supply to the Food and Drug Directorate evidence of biological availability. There are a number of problems, however, relating to this. It would not seem to be necessary that this should apply to all drugs. For example, you would not want to include acetylsalicylic acid, or aspirin, under such a

requirement. You would have to draw some sort of line.

Possibly it could be done by putting in a requirement whereby the Directorate would have the authority to request evidence of biological availability of a drug when required. This sort of regulation is under consideration by the Food and Drug Directorate at the present time.

The Chairman: Dr. Chapman, just following that up, if the requirement by regulation, or whatever way it is, were that any secondary manufacturer operating under a compulsory licence would be required to furnish evidence to the satisfaction of the Food and Drug Directorate as to the biological availability, or whatever provision it is you put in there, that would not be imposing conditions which might refer to aspirin. If they were manufacturing aspirin for the first time, I would take it they would not be so manufacturing it under a compulsory licence.

Dr. Chapman: No, Mr. Chairman.

The Chairman: So that you do restrict the field, if you limit it to products that are going to be made by a manufacturer under a compulsory licence. That would mean that they are making them for the first time.

Dr. Chapman: Yes, this is correct, Mr. Chairman. But, of course, as was pointed out this morning, that would only cover a small proportion of the prescription drugs on the Canadian market, and our responsibility in the Food and Drug Directorate, and in the enforcement of the Food and Drugs Act, is to ensure the quality of all drugs on the Canadian market.

The Chairman: That was not the issue here this morning. If I were to define the issue, I would say that the concern was in relation to secondary manufacturers under compulsory licences and also, possibly, to the imported products coming in from abroad. To what extent do you check imported drugs now?

Dr. Chapman: Mr. Chairman, we do our best to check imported drugs to the same extent that we check domestically-produced drugs. That is, in terms of the relative volumes of the two groups.

For your interest, I might indicate to you the figures for the imported human drugs. As of March 1969 we had, in our index, records of 2,208 human drugs imported into this country in final dosage form. The point I wish to

make is that, of those, 1,584 came from the United States; 234 came from France; 173 came from England and 133 came from West Germany, while 39 came from Switzerland and the rest were all less than ten. So this amounts to over 2,100 of the 2,208 drugs being imported from those countries.

These countries do have well organized drug industries and, as one of the speakers this morning indicated, the United States has been working with the Swiss authorities in order to work out an agreement whereby there might be an exchange of inspection. That is, the United States food and drug administration would accept the inspection of the Swiss authorities so far as drugs produced in Switzerland are concerned.

This is where the difference lies so far as the imported drugs are concerned. We will not be able to provide the same type of inspection as we can for a drug produced in Canada. We have appointed a scientist who will be the European drug representative for the Food and Drug Directorate, and it will be this officer's responsibility to maintain contacts with Ministries of Health and with drug control agencies in European countries. I also indicated this morning that as far as the importation of drugs is concerned we now have authority to require information and evidence available in Canada that they are produced under conditions which meet our requirements, and furthermore that the drugs must be analyzed in Canada by an acceptable method.

Senator Sullivan: How many inspectors will you have?

Dr. Chapman: We will not have any inspectors in Europe. We will have one officer who will maintain contacts, as I have indicated, with appropriate European officials and we would hope that with the authority we have under these new regulations that we would be able to check out with the European authorities whenever there was any question about the drug coming into Canada.

Senator Molson: What about the labelling that requires the analysis of these drugs—will that also require the country of origin to be stated?

Dr. Chapman: No, sir, it will not.

Senator Molson: Why not?

Dr. Chapman: There is a difficulty here. First of all, if you put the name of the foreign

manufacturer on the product only, that is to say if you only put the foreign manufacturer without a Canadian representative then we do not have jurisdiction in Canada to take action against the foreign manufacturer. We have already had this situation in the case of a number of imported drugs. The other difficulty arises from the question as to when do you consider a drug as being manufactured outside Canada. When it is imported in bulk? When it is imported in the finished dosage form? When it is imported in bulk as the raw material? Or at some intermediate stage along its production? Now this would be an extremely difficult requirement for us to enforce. So what we do want is that the person who is responsible for that drug should have his name on the label.

Senator Molson: I quite agree with that and I think from your point of view that is absolutely right. But I am not looking at it from your point of view; I am looking at it from my own point of view and having listened to what was said this morning I am getting rather scared of taking pills. They do not have the same appeal for me that they had before. I think if I am taking something that is coming from Morocco or Iran, I would like to know. If we are protecting the public, I cannot see why we should not put all names on these. In this case I did not ask for the name of the manufacturer to be put on but the country of origin because it would be interesting to know if the drug came from the United States or the United Kingdom or France or Italy or one of those other countries which we the public would feel happier about such as Holland or Poland.

Dr. Chapman: I notice, Senator, that one product comes from Morocco out of 25,000 on the list, and none come from Iran.

The Chairman: That one coming from Morocco might be enough to upset the applecart.

Senator Lang: I still have to rely on my medical practitioner in these matters.

The Chairman: I was wondering about a statement which was made this morning and I would like to hear your comment on it, Doctor. It was said that a drug may be imported in bulk form from some place outside Canada and then packaged here, and the person who disposes of it or distributes it in Canada describes himself as a manufacturer. That does not give any chance of knowing who put the formulation together.

Dr. Chapman: Mr. Chairman, it does not give the public any opportunity to know that, but as soon as it comes into a manufacturing plant in Canada we have access to the records in that plant and so we can check their records and determine where it came from and then apply the requirements under the authority we now have to ensure it was produced under conditions which meet our requirements. Furthermore the moment it goes into a Canadian pharmaceutical manufacturing plant, that manufacturer has responsibility for checking not only each lot or batch of raw or bulk material used in the processing of the drug, but he also has responsibility to see that each lot or batch in dosage form shall be tested for potency and purity having regard to its recommended use. When a chemical comes into Canada in either raw or bulk form to be processed into a drug, and when it enters a Canadian processing plant, we then have authority over that drug and we can require that it be properly tested.

Senator Leclerc: Can you require that they put on a label saying "produce of such and such a country"?

Dr. Chapman: As you are aware, Mr. Chairman, the Food and Drug Act comes under Criminal Law and this would have to be checked out to see whether or not we would have authority to insist that the country of origin be declared on the label.

The Chairman: Well, if your legislation is criminal law and required a provision that was incidental to the main purpose, then, of course, you would have the authority to do it.

Dr. Chapman: There is another problem, Mr. Chairman. This lies in the fact that in some instances drugs imported from abroad may move from one country to another. For example we have found drugs produced in Italy that have gone to West Germany, Denmark and then Canada. Under these circumstances we would be very much at a loss to indicate the actual original source of that material.

Senator Molson: We require it in all sorts of manufactured goods. I think if you buy a tin of aspirin, and the label on the tin is printed in the United States it has to have stated on it "container lithographed in the United States." Is that not so? I think it is. I do not think this is such a rare principle in relation to manufactured goods. I realize that bulk supplies may present a problem, but I think there must be a great many actually

brought in here in dosage form which are merely packaged here but which were manufactured elsewhere. Even though we have a so-called Canadian manufacturer who probably in that case is just an importer and whose name is required for local responsibility, the fact remains that the consumer getting a pill or capsule or liquid is getting something straight from that other country. I cannot see why in this case one should not be made aware of this fact.

Hon. Mr. Basford: Mr. Chairman, if I may draw Senator Molson's attention to clause 5 of the bill and to my earlier remarks in which I said that in so far as this legislation was concerned we were giving the Food and Drug Directorate every possible authority it needed, I would like to read the amendment which we are making to the Food and Drugs Act. I will read it to show that there can be no doubt whatever that the Food and Drug Directorate is in charge.

(1a) Without limiting or restricting the authority conferred by any other provisions of this Act or any Part thereof carrying into effect the purposes and provisions of this Act or any Part thereof, the Governor in Council may make such regulations governing, regulating or prohibiting

(a) the importation into Canada of any drug or class of drugs manufactured outside Canada, or

(b) the distribution or sale in Canada, or the offering, exposing or having in possession for sale in Canada, of any drug or class of drugs manufactured outside Canada,

as the Governor in Council deems necessary for the protection of the public in relation to the safety and quality of any such drug or class of drugs.

I make these remarks to show that this bill in front of us, C-102, has this specific amendment in it to the Food and Drugs Act to give authority to Dr. Chapman and the Department of National Health and Welfare to come to the Governor in Council and request whatever regulations they require to protect the public in relation to the safety and quality of any such drug.

We are discussing—it is a useful discussion, and we had this sort of discussion in the house committee—also the kind of regulations that should be passed. But my point—because people have made the allegation that we have

not been concerned about safety—is that in this legislation we have made every possible amendment to ensure that the people who are in charge of safety—namely, the Food and Drug Directorate, about whom we heard so many expressions of confidence this morning—are fully in charge and have the legislative authority to act when action is needed.

The Chairman: Section 5, to which you referred, Mr. Minister, deals with the importation of drugs or classes of drugs manufactured outside of Canada, and it deals with the distribution or sale in Canada, et cetera, of drugs or classes of drugs manufactured outside of Canada, so that the power to make regulations governing regulating or prohibiting is limited to importation, distribution or sale of drugs manufactured outside of Canada. So this would only be a partial answer to the question raised about requiring a secondary manufacturer in Canada who is manufacturing the compulsory licence drug which is granted from the patentee. This does not deal with the situation.

Hon. Mr. Basford: The manufacturer in Canada is already covered under the Food and Drugs Act, and that authority has been clear for years.

The Chairman: I do not think it was clear here today.

Hon. Mr. Basford: Section 24.

The Chairman: I know, but the point was that once a drug has been qualified for marketing—there is a patent and it is qualified for marketing under the provisions of the regulations in the Food and Drugs Act, therefore it can be sold in Canada. But then when a compulsory licence is issued under that patent and a secondary manufacturer comes into the picture, does he arrive and get the benefit of your original clearance, or does he have to establish his qualification for manufacturing a safe and healthy drug?

Hon. Mr. Basford: Dr. Chapman will undoubtedly want to add to what I say, but the secondary manufacturer will have to meet the requirements and the regulations of the Food and Drugs Act—this is what Dr. Chapman said a moment ago—no matter how he manufactures it. When you refer to the secondary manufacturer, under a compulsory licence, surely the same regulations should apply and the same safety requirements should apply, whether he is manufacturing and selling it as an original patentee—or,

first, whether there is a patent on it at all, whether he is manufacturing it as a patentee, whether he is manufacturing it under a compulsory licence, or under a voluntary licence?

The Chairman: I agree that it should, but does it?

Hon. Mr. Basford: It does.

The Chairman: I am not sure it does.

Hon. Mr. Basford: It does, and Dr. Chapman will explain how it does.

Dr. Chapman: Mr. Chairman, as the Minister has pointed out, the question as to whether or not it is patented or sold under a compulsory licence does not alter the fact it must meet all the requirements of the Food and Drugs Act and regulations. As we discussed this morning, you could have a situation where a manufacturer might get a compulsory licence, but that drug, if it was still in new drug status, could not be sold until such time as the manufacturer had supplied all the required data.

The Chairman: But you have put a qualification or limitation in there I did not put in there. You say if it has not got beyond a new drug qualification. I am taking the situation where there is a patent on a drug in Canada. They then come over to you and present all you need in order to qualify that drug so that it can be marketed and sold in Canada. That is the stage you are at. It is not a new drug any longer, is that right?

Dr. Chapman: Yes.

The Chairman: You imported the words "new drug" in your answer to my question. At that stage there is a compulsory licence. As far as that secondary manufacturer who is operating under that compulsory licence is concerned, what are the checks you have on him? Just your inspection?

Dr. Chapman: No, all the requirements of the Food and Drugs Act and regulations apply.

The Chairman: Not the requirements that deal with new drugs.

Senator Leonard: Does it take him another five years then?

Dr. Chapman: I am sorry, Mr. Chairman. The drug may well be still in new drug status. If it is, it must meet the new drug requirements as well as all other requirements of the Food and Drugs Act and regulations.

The Chairman: I am not talking about that; it is beyond that status.

Dr. Chapman: Then it must meet all the requirements, other than the new drug requirements.

The Chairman: How do you determine that?

Senator Lang: I think Dr. Chapman is saying the licensee under the patent is another Canadian citizen under the law, just as is the original patentee, and that he is dealt with equally under the law. I think it is as simple as that.

The Chairman: I do not think it is that simple.

Senator Lang: It is a difference of opinion. My submission is that there is an argument that the licensee will not be manufacturing the clinical equivalent that the patentee is doing, and that the Food and Drug Directorate are not able to make the distinction between those clinical imbalances.

It is a matter of opinion as between a person who may have a vested interest in protecting a patent and a person wishing to become a licensee of a patent. We are in an area of pure opinion, and I do not see how you could change legislation to overcome that difficulty.

The Chairman: What I am trying to establish is that there are procedures under which the inventor or the patentee of a new drug can get a clearance from the Food and Drug Directorate, so becoming qualified to sell. Therefore, it no longer has the status of a new drug. I say that in those circumstances, when there is a compulsory licence granted some third person to manufacture that drug, what is the new check? It is not the new drug status check at that stage.

Senator Lang: The same check as the original patentee is now under, exactly the same system of checks as the original patentee is still living with—am I not correct? The licensee is going to be subject to the same rules and regulations as the original patentee is at that time living with.

Dr. Chapman: That is correct, senator.

I would like to make one comment, Mr. Chairman. You refer to the fact that when the original manufacturer receives the notice of compliance he then can market that new drug. That means that that product, that exact formulation, can be sold in Canada. But a

second manufacturer of the same drug product may well find his product is still under new drug status, and a third manufacturer will find that. Sometimes we find a number, four or five, may come to us and inquire as to the new drug status of a drug that has been on the market, say, for three or four years, and they are informed this drug is still in new drug status. Then they have the choice of either meeting all the requirements of the new drug regulations—and if they do so they are issued a notice of compliance, and then they can market the drug—or not selling the drug.

Senator Lang: On this question of chemical equivalency, which seems to me to be at the heart of some of the concern, you quoted a report indicating that this problem had been magnified out of proportion to the realities of the situation under certain circumstances. Bearing that in mind, I would assume there is also a clinical difference in each patient who receives the drug, which I conceive as being infinitely more variable than any variation that might occur in a regulated drug of some description. I speak from some personal experience as having been in a clinical experimental unit as a guineapig for a drug.

Senator Sullivan: They vary do they not?

Senator Lang: The drugs vary, but the patients vary as much or more. This is my layman's reaction to the experiments conducted on me.

Dr. Chapman: Certainly the patients vary; there is no doubt about that. However, we have encountered some instances in which the drugs also vary. This is the reason we have been giving consideration to some sort of regulation that would permit us to require evidence of biological availability with certain drugs.

Senator Sullivan: Dr. Chapman, have you seen the Final Report of the Task Force on Prescription Drugs of February 1969, by the United States Department of Health, Education and Welfare, on page 34 of which there is a section headed "Drug Cost and Clinical Equivalency"? Have you seen this report? I should like to read a paragraph:

As recommended by the Food and Drug Administration, any generic-name counterpart thereafter proposed for introduction should be required either (a) to match the reference product, through conformity with all pertinent USP, NF, or other compendium standards, and, when

required by the Secretary, presentation of appropriate test data to demonstrate essentially equivalent biological availability, or (b) to present acceptable clinical evidence of safety and efficacy through the New Drug Application procedure.

Dr. Chapman: Yes, senator. That was in the interim report and has been included in the final report.

Senator Sullivan: That was referred to this morning by Dr. Pernarowski of Vancouver.

Dr. Chapman: Of the University of British Columbia, yes. This, of course, is exactly what I have been talking about. We are considering in certain circumstances a requirement of the company to provide us with data that would indicate the biological availability of a particular drug.

Senator Sullivan: You insist on that, do you?

Dr. Chapman: No, sir. This is not law yet. We have been studying this matter.

Senator Leonard: But you have the power under the act to prescribe that.

The Chairman: Not under this bill.

Senator Leonard: They have the power.

The Chairman: Under the general act.

Dr. Chapman: We would have the power under section 24(1) of the Food and Drug Act to recommend to the Governor in Council that such a regulation be passed.

Senator Lang: The Governor in Council has power, then, to provide you with regulatory powers to do such a thing?

Dr. Chapman: Yes, that is correct.

The Chairman: On this whole problem, would biological availability come within the description of prescribing standards, composition, strength, potency, purity, quality or other property of any article of food or drug, cosmetic or device?

Dr. Chapman: Yes, sir.

The Chairman: Would it? Which are the words there?

Dr. Chapman: Certainly covered by "other property".

The Chairman: The *ejusdem generis* rule would apply there; it would be things of the

nature of the one cited; you could not import anything else.

Dr. Chapman: This would certainly be a quality; it would relate to the strength and potency, and possibly to the composition.

Senator Molson: If instead of saying they were considering this they said that they expected to put this into regulations, I think at least a half-hour's discussion might have been eliminated. I think many of the committee would like to hear Dr. Chapman say he believes this will be done.

Dr. Chapman: I was just going to point out that we do have to determine what this would involve. If we covered all drugs coming on the market for the first time it would be a tremendous task, not only for the drug manufacturer, but also for the Food and Drug Directorate to evaluate the data that would be supplied. We have to weigh the possible consequences of not having such a regulation with the resources that we have and determine where we should put those resources.

The Chairman: There is no use telling us you have the power to do something if you do not say to us "I am going to do it".

Senator Molson: You were talking about certain specified cases. Surely that does not mean you would have an immediate flood of such dimensions that you could not handle it because you would not specify the drug product or it was beyond your capability to handle?

Dr. Chapman: We would certainly have to consider whether or not we had the resources to do this at this time, and whether or not the resources we do have should be put into monitoring imported drugs as they enter the country, or divert some of those resources to evaluating data submitted. I think the way it could be done is to give the directorate au-

thority to request information when it is required, and this is the stage we have reached in our consideration at the moment.

The Chairman: Are there any other questions?...

I want to thank you, Mr. Minister, for devoting a day to this committee, and Dr. Chapman, whom I have seen many times, Mr. Grandy, and the others who have been here. We will have to weigh this and find out what the committee wants to do. I doubt whether the committee would do anything without giving some indication in advance, Mr. Minister; we are not just going to throw something at you.

Hon. Mr. Basford: I am not sure what the committee has in mind.

The Chairman: I do not know yet, so I cannot tell you.

Senator Croll: What do you propose, Mr. Chairman?

The Chairman: I think we should have a conference, whether we have it now or later, certainly on our own. The committee should have its own deliberations. It may be that some members will want to read the report to see how far it goes. It will be available for our next meeting.

Senator Croll: At some other time?

The Chairman: Yes.

Senator Croll: When we have more members present?

The Chairman: Yes. Perhaps we would want the transcript before we reach a formal decision as to what we will do. Therefore, I suggest, that we take the matter under consideration.

Hon. Senators: Agreed.

The meeting adjourned.



First Session—Twenty-eighth Parliament

1968-69

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE

ON

BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 43

WEDNESDAY, MAY 21st, 1969

Complete Proceedings on Bills S-35, S-36, S-37 and S-38,

intituled respectively:

- “An Act to amend the Canadian and British Insurance Companies Act and other statutory provisions related to the subject matter of certain of those amendments”;
- “An Act to amend the Foreign Insurance Companies Act”;
- “An Act to amend the Trust Companies Act”; and
- “An Act to amend the Loan Companies Act”.

WITNESSES:

Department of Insurance: R. Humphrys, Superintendent. *The Canadian Life Insurance Association:* K. R. MacGregor, President. *The Trust Companies Association of Canada (and Loan Companies Assoc.):* W. R. Bean, Past President. (Deputy Chairman Vice-President, Canada Trust Company and Huron and Erie Mortgage Corporation.)

REPORTS OF THE COMMITTEE

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Lang
Aseltine	Desruisseaux	Leonard
Beaubien	Gélinas	Macnaughton
Benidickson	Giguère	Molson
Blois	Haig	Phillips (<i>Rigaud</i>)
Burchill	Hayden	Savoie
Carter	Hollett	Thorvaldson
Choquette	Isnor	Walker
Connolly (<i>Ottawa West</i>)	Kinley	Welch
Cook		White
		Willis—(30)

Ex officio members: Flynn and Martin

(Quorum 7)

ORDERS OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, May 30th, 1969:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Lang, seconded by the Honourable Senator Cook, for the second reading of the Bill S-35, intituled: "An Act to amend the Canadian and British Insurance Companies Act and other statutory provisions related to the subject matter of certain of those amendments".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Lang moved, seconded by the Honourable Senator Cook, that the Bill be referred to the Standing Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Lang seconded by the Honourable Senator Cook, for a second reading of the Bill S-36, intituled: "An Act to amend the Foreign Insurance Companies Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Lang moved, seconded by the Honourable Senator Cook, that the Bill be referred to the Standing Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Martin, P.C., seconded by the Honourable Senator Roebuck, for the second reading of the Bill S-37, intituled: "An Act to amend the Trust Companies Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator McDonald moved, seconded by the Honourable Senator Roebuck, that the Bill be referred to the Standing Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative.

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Denis, P.C., seconded by the Honourable Senator Robichaud, P.C., for the second reading of the Bill S-38, intituled: "An Act to amend the Loan Companies Act".

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Denis, P.C., moved, seconded by the Honourable Senator Bourque, that the Bill be referred to the Standing Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, May 21st, 1969.

(47)

At 2.15 p.m. the Standing Senate Committee on Banking, Trade and Commerce resumed and proceeded to the consideration of the following:

Bill S-35, "An Act to amend the Canadian and British Insurance Companies Act and other statutory provisions related to the subject of certain of those amendments".

Bill S-36, "An Act to amend the Foreign Insurance Companies Act".

Bill S-37, "An Act to amend the Trust Companies Act".

Bill S-38, "An Act to amend the Loan Companies Act".

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien, Benidickson, Blois, Carter, Choquette, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Giguère, Hollett, Isnor, Kinley, Lang, Leonard, Macnaughton, Molson, Phillips (*Rigaud*), Thorvaldson, Walker, White and Willis.—(24)

Present, but not of the Committee: The Honourable Senators Dessureault, Grosart, Macdonald (*Cape Breton*), McDonald, McLean, Méthot, Paterson and Sullivan.—(8)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Resolved—That 800 copies in English and 300 copies in French be printed of the Committee proceedings on the said Bills.

The following witnesses were heard:

Department of Insurance:

R. Humphrys, Superintendent.

The Canadian Life Insurance Association:

K. R. MacGregor, President.

The Trust Companies Association of Canada:

Walter A. Bean, Deputy Chairman and Vice-President, Canada Trust Company and Huron and Erie Mortgage Corporation. (Past President of Association).

Mr. Bean also represented the Loan Companies Association.

Upon motions duly put, it was *Resolved* to report Bills S-35, S-37 and S-38, *as amended*.

(The full text of the amendments appears by reference to the Reports of the Committee immediately following these Minutes.)

Upon motion it was *Resolved* to Report Bill S-36 without amendment.

At 4.00 p.m. the Committee proceeded to the next order of business.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORTS OF THE COMMITTEE

WEDNESDAY, May 21st, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill S-35, intituled: "An Act to amend the Canadian and British Insurance Companies Act and other statutory provisions related to the subject matter of certain of those amendments", has in obedience to the order of reference of May 20th, 1969, examined the said Bill and now reports the same with the following amendments:

1. *Page 17*: Strike out lines 1 to 17, both inclusive, and substitute therefor the following:

"(4) For the purposes of this section, where a person or a group of persons owns beneficially, directly or indirectly, or pursuant to this subsection is deemed to own beneficially, equity shares of a corporation, that person or group of persons shall be deemed to own beneficially a proportion of the equity shares of any other corporation that are owned beneficially, directly or indirectly, by the first mentioned corporation, which proportion shall equal the proportion of the equity shares of the first mentioned corporation that are owned beneficially, directly or indirectly, or that pursuant to this subsection are deemed to be owned beneficially, by that person or group of persons."

2. *Page 17*: Strike out lines 18 to 27, both inclusive, and substitute therefor the following:

"(5) Notwithstanding subsection (4), a company is not prohibited from making an investment in a corporation only because a person or a group of persons that owns beneficially, directly or indirectly, or is deemed to own beneficially, equity shares of the company is by reason thereof deemed to own beneficially equity shares of the corporation."

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

WEDNESDAY, May 21st, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill S-36, intituled: "An Act to amend the Foreign Insurance Companies Act", has in obedience to the order of reference of May 20th, 1969, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

WEDNESDAY, May 21st, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill S-37, intituled: "An Act to amend the Trust Companies Act", has in obedience to the order of reference of May 20th, 1969, examined the said Bill and now reports the same with the following amendments:

1. *Page 33*: Strike out lines 12 to 27, both inclusive, and substitute therefor the following:

"by

(A) the government, or an agency of the government, of the country in which the real estate or leasehold is situated or of a province, state or municipality of that country, or

(B) a corporation, the preferred shares or common shares of which are, at the date of investment, authorized as investments by paragraph (h) or (j), or by those paragraphs as modified by section 68A,"

2. *Page 44*: Strike out lines 8 to 24, both inclusive, and substitute therefor the following:

"(4) For the purposes of this section, where a person or a group of persons owns beneficially, directly or indirectly, or pursuant to this subsection is deemed to own beneficially, equity shares of a corporation, that person or group of persons shall be deemed to own beneficially a proportion of the equity shares of any other corporation that are owned beneficially, directly or indirectly, by the first mentioned corporation, which proportion shall equal the proportion of the equity shares of the first mentioned corporation that are owned beneficially, directly or indirectly, or that pursuant to this subsection are deemed to be owned beneficially by that person or group of persons."

3. *Page 44*: Strike out lines 25 to 34, both inclusive, and substitute therefor the following:

"(5) Notwithstanding subsection (4), a trust company is not prohibited from making an investment in a corporation only because a person or a group of persons that owns beneficially, directly or indirectly, or is deemed to own beneficially, equity shares of the trust company is by reason thereof deemed to own beneficially equity shares of the corporation."

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

WEDNESDAY, May 21, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill S-38, intituled: "An Act to amend the Loan Companies Act", has in obedience to the order of reference of May 20th,

1969, examined the said Bill and now reports the same with the following amendments:

1. *Page 28:* Strike out lines 3 to 18, both inclusive, and substitute therefor the following:

“by

(A) the government, or an agency of the government, of the country in which the real estate or leasehold is situated or of a province, state or municipality of that country, or

(B) a corporation, the preferred shares or common shares of which are, at the date of investment, authorized as investments by paragraph (d) or (e), or by those paragraphs as modified by section 60A,”

2. *Page 37:* Strike out lines 8 to 25, both inclusive, and substitute therefor the following:

“(4) For the purposes of this section, where a person or a group of persons owns beneficially, directly or indirectly, or pursuant to this subsection is deemed to own beneficially, equity shares of a corporation, that person or group of persons shall be deemed to own beneficially a proportion of the equity shares of any other corporation that are owned beneficially, directly or indirectly, by the first mentioned corporation, which proportion shall equal the proportion of the equity shares of the first mentioned corporation that are owned beneficially, directly or indirectly, or that pursuant to this subsection are deemed to be owned beneficially by that person or group of persons.”

3. *Page 37:* Strike out lines 26 to 35, both inclusive, and substitute therefor the following:

“(5) Notwithstanding subsection (4), a loan company is not prohibited from making an investment in a corporation only because a person or a group of persons that owns beneficially, directly or indirectly, or is deemed to own beneficially, equity shares of the loan company is by reason thereof deemed to own beneficially equity shares of the corporation.”

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

EVIDENCE

Wednesday, May 21, 1969

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-35, to amend the Canadian and British Insurance Companies Act and other statutory provisions related to the subject matter of certain of those amendments, met at 2.30 p.m. to give consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: May we have the usual motion for printing.

Upon motion, it was *resolved* that a verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 copies in French be printed.

The Chairman: Bill S-35 is an Act to Amend the Canadian and British Insurance Companies Act, etc. We have representatives here on behalf of the Insurance Companies. For the Canadian Life Insurance Association, we have the President, Mr. K. R. MacGregor, the First Vice-President, Mr. E. G. Schafer, Mr. A. M. Campbell, Mr. A. T. Seedhouse, Mr. J. A. Tuck, Mr. A. F. Williams, and Mr. G. Roussin. Mr. Humphreys, is here and as is the usual practice in bills of this kind we open by getting an explanation from him.

Mr. R. Humphrys (*Superintendent of Insurance*): Mr. Chairman and honourable senators, the purpose of Bill S-35 is to amend the Canadian and British Insurance Companies Act. I think I should say at the outset that the four bills before you form a package in that many of the amendments in this first bill run through the others.

The principal purpose of the amendments to the Canadian and British Insurance Companies Act can be touched upon very quickly. First of all and not necessarily the most important matter I might mention is a change in the system of incorporating companies and

amending existing charters. This bill proposes the adoption of a letters patent system for incorporating insurance companies and a letters patent system for amending charters including existing charters instead of the previous practice of doing so by special act of parliament. As you know from experience over many years, the method of incorporation of insurance companies federally has been by the introduction of private bills and many of those have been dealt with in the past. These amendments would also permit the incorporation of provincially incorporated companies as federal companies by the issuance of letters patent subject, of course, to the concurrence of the province of incorporation and the establishment of an appropriate legislative authority by the province as well as by parliament. This letters patent system, however, would not be exclusive. Companies and persons would still have the right to approach Parliament with a private bill if they so wished, but they could avail themselves of a system of incorporation that is parallel to that used for other companies.

The second purpose is concerned with the revision of the system of supervision and control of companies, particularly of companies that get into financial difficulties. At the present time there are provisions in the act permitting the supervisory authority to exercise this control but there is a lack of intermediate tools. There is the power to issue a certificate of registry and there is the power to withdraw such a certificate but there is no intermediate power. If conditions arise where it is important and necessary to have action taken in order to rehabilitate a company or to conserve its assets and restore its ability to meet its obligations, there is a lack of power to get these things done. This bill proposes greater flexibility. In essence, it requires the superintendent to report to the Minister whenever he thinks a company's ability to meet its obligations may be impaired or if its assets in Canada are less than its liabilities in Canada.

Then if the Minister, having heard the company, concurs he may take one or more of three different courses of action. He may insert conditions in the certificate; he may grant the time to remedy the defect or he may direct the superintendent to take control of the company's assets. This, as is described in the bill, does not mean that the company must discontinue business. It provides the machinery whereby the assets may be conserved and the supervisory authority may satisfy itself that the assets are not being improperly dealt with while time is taken to remedy the defects and rehabilitate the company. The company will be able to operate as such and continue its business, but all rights to deal with its assets would be subject to concurrence by the supervisory authority.

The next step would be that in any case where the superintendent has control of the assets of a company the Minister would be empowered to seek a court order directing the superintendent either to take control of the company for rehabilitation or perhaps for winding up. If it is a matter of rehabilitation he could appoint an advisory committee from other companies to advise him in carrying out his duties.

If the company is rehabilitated, it could be returned to its owners. It provides that the expenses involved in the supervision by the superintendent for the rehabilitation or winding-up of the company would be assessed against other like companies.

The third main category is a strengthening provision to provide for prohibition of investments and loans that are not at arm's length. These provisions will attempt to ensure that the investment decisions by an insurance company will be made free from a conflict of interests on the part of those who may be in a position to exercise influence or control over those decisions.

Now those are the three main categories of amendments and probably the three that constitute the most important provisions of the bill. There are a number of others that are worth mentioning briefly.

It is proposed to deal with the power of insurance companies to operate segregated funds, that is, funds that are established in connection with contracts where the obligations vary with the market value of the assets in the fund. Companies now have this power in rather a limited way. Therefore it is proposed to expand this power to some extent. The essence of these funds is that the

investment risk is transferred to the policy holder. The company may or may not assume the mortality risk, but the effect of these operations is that the investment risk, both the losses and the gains, goes to the policy holder.

The power of insurance companies to operate subsidiaries is proposed to be expanded. They now have the power to own life insurance subsidiaries abroad, fire and casualty insurance subsidiaries in Canada and real estate subsidiaries. It is also proposed to expand those powers to enable them to establish subsidiary companies for the operation of investment funds and subsidiaries for the purpose of distributing investment contracts, mutual fund contracts or other types of variable investment plans.

It is also proposed that in connection with major transfers of stock of an insurance company prior notice will have to be given to the supervisory authorities. It is not proposed that the Government be empowered to exercise a veto power on the transfer, but any transfer that is more than 10 per cent of the stock of a company, or any transfer that changes control of a company, would have to be notified to the Superintendent at least 30 days in advance of the date the transfer is to take place; and that notice would have to include full information as to the beneficial owner of the shares after they are transferred.

There are some changes in the investment powers, but they are quite minor. One of some interest might be that the power to make mortgage loans is expanded to enable companies to make loans in excess of 75 per cent of the value of the real estate where the excess is covered by a policy of mortgage insurance issued by a registered insurance company. The companies now have that power where they are insured through C.M.H.C. and mortgage insurance is issued by that corporation.

Power is sought to enable the Governor in Council to pass regulations dealing with the custody and safe keeping of securities. It is proposed in that regard to consult with committees of the industry in order to establish good patterns and practices for the care and custody of securities, the bonding of officers, all with a view to increasing the safety and security of the assets of companies.

There is an amendment in relation to the restriction of transfer of shares to non-residents, and their voting rights. This is to correct

a point that was raised at the time a bill was before Parliament a few weeks ago to incorporate the Transcoastal Life Assurance Company. You may recall that company indicated its Canadian subsidiary would be operated under the control of Transcoastal in the initial stages, but that they proposed to make shares available to Canadians; but they pointed out that if they sold their interest below 50 per cent, they would lose all their voting rights. Their interpretation of the act was correct, and we have proposed an amendment which would enable them to preserve their voting rights as they sold their shares down, so that if they wanted to reduce their ownership below 50 per cent it would not damage their voting rights. Once they go below 50 per cent they have to remain stable or keep going down. If they try to buy back up again they would lose all their votes.

It is proposed to transfer a number of discretionary decisions running through the existing act from Treasury Board to the Minister. This is consequent on the reorganization whereby Treasury Board fulfils different functions from those it fulfilled some years ago when these authorities were placed with Treasury Board. In most cases the discretionary decisions will lie with the Minister; in a few cases they will go to the Governor in Council; and in even fewer cases, those of a purely administrative nature, they will rest with the superintendent.

It is proposed to insert audit provisions. There have not been any provisions heretofore specifying the qualifications of the auditor or requiring an audit, though there has been the power for the Superintendent to require an audit where he thinks it necessary. So, there are audit provisions proposed in this bill, and the qualifications of the auditor will be the same as those in the Bank Act.

One change is proposed concerning values of assets for fire and casualty companies. At present they are required to keep all their assets on a current market value basis. It is proposed they will be able to use, in the future, a modified market value basis, which is the same basis as life insurance companies have for stocks and corporate bonds. This means that, instead of writing the securities down to the market value, they may take the impact of a drop in market value in three stages rather than all at once.

Mr. Chairman, I think that covers the main points of significance in the bill before you. I

think those are all the remarks I have to make.

The Chairman: Do you mean it has taken you just this short period of time to deal with 67 or 68 pages of the bill?

Senator Walker: Could I ask the Superintendent a question? You have gone over this carefully and have given us an outline of it. Is there anything in the bill to which you have an objection which should come to our notice?

Mr. Humphrys: No, senator.

There is one further point I should mention, however, that I think is important enough to draw to your attention, concerning British companies that do business in Canada. This act requires them to maintain assets in Canada to cover their liabilities; and these assets must be in Canadian securities so far as corporate securities are concerned. They may deposit for that purpose corporate bonds and stocks of Canadian corporations only. There is some elbow room in that they have a so-called basket provision equal to 7 per cent of their liabilities, and within that 7 per cent they have discretion as to what investments they will propose, and that extends to cover not only Canadian but also non-Canadian securities. In connection with segregated funds where contracts are issued and the investment risk is taken by the policyholder, the British companies have put forth the view that they are at a disadvantage as compared to Canadian companies since Canadian companies are not restricted so tightly to using only Canadian securities in those segregated funds. In some cases contracts are issued under this provision, say, with group pension arrangements where the employer may be prepared to take the investment risk but may wish to have some of the funds invested in U.S. as well as Canadian equities.

In order to put British companies on the same plane as Canadian companies in this respect, there is an amendment proposed to the effect that, so far as segregated funds are concerned, British companies will not be confined to Canadian corporate securities. It is not proposed as an invitation to non-resident companies to come to Canada and invest all their proceeds abroad; it is intended to equalize the competitive position.

Senator Isnor: Mr. Humphrys, you mentioned about mortgages and the advance being greater than 75 per cent. Is there any limit to that advance?

Mr. Humphrys: There is no limit as long as the excess is insured.

Senator Macnaughton: Mr. Humphrys referred, if I understood him correctly, to the liability of other insurance companies in the case of the default of one of the companies. Have you the reference to that in the bill?

Mr. Humphrys: That liability is to absorb the expenses, but not to cover a shortage in the assets of the company.

Senator Macnaughton: That was my misunderstanding, I am sorry.

Mr. Humphrys: The important feature is that if there is a liquidation, it would enable the liquidation expenses to be met without drawing on the assets of the company.

Senator Macnaughton: Then you referred also to the power to invest in and the control of subsidiary companies. Where is the reference to that?

Mr. Humphrys: That is on page 26 of the bill, section 64A. The new material has the side lines in paragraph (b), and over the page in paragraphs (e) (f) and (g). Paragraph (b) is really an advisory, management or sales distribution service in connection with life insurance or annuities. Paragraph (e) is any corporation incorporated to offer public participation in an investment portfolio, which would include mutual funds. Paragraph (f) is again an advisory, management or sales distribution service in connection with the mutual fund, which is a common way that mutual fund shares are distributed. Paragraph (g) is a general provision to allow, subject to the approval of the minister, any corporation incorporated to carry on any other business reasonably ancillary to the business of insurance.

Senator Macnaughton: Would you be in a position to interpret that paragraph at the moment, or is that too big a question?

Mr. Humphrys: I do not think it could be positively defined at this stage.

Senator Walker: It is a catch-all.

Mr. Humphrys: Yes, activities that are incidental or supplementary to that of the main company. It would not by its terms be broad enough to launch an enterprise that is completely different from and unconnected with the activities of the insurance company.

Senator Macnaughton: What about the publishing field? That would be ancillary, printing your own contracts.

Mr. Humphrys: We may have some discussion, debate and argument over the meaning of this before it is through, but I would say publishing material for the company, that is, its policy forms, rate books and advertising, would probably be ancillary to the company. Publishing generally—that is, going out and taking job printing or publishing for somebody else—probably would not be.

The Chairman: It would not include the larger conglomerate activities?

Mr. Humphrys: I think not, Mr. Chairman.

Senator Beaubien: What about the segregated fund and the seven per cent basket fund?

Mr. Humphrys: The basket fund is a modification of the investment powers relating to the regular insurance operations, and it gives the company an area of discretion in which it may invest in its own choice. The segregated fund is something different. It refers to the segregation and definition of a certain body of assets that stand behind defined contracts, these contracts being such that the investment gain or loss arising from the market performance of this fund flows through to the policyholder. Those funds are relieved from certain of the investment restrictions that otherwise apply, because the insurance company is no longer guaranteeing a fixed dollar liability. It is the type of control you might need on an investment portfolio where the fixed dollars are not so necessary, where the policyholder says, "I will take my chance on the investment gains or losses".

Senator Leonard: With respect to the new section 10A dealing with the notice of an application of transfer of 10 per cent or more of the total outstanding shares, what kind of action would the Superintendent contemplate taking on receiving that notice? I assume it would not just be filed away but would be a matter of publicity, or what?

Mr. Humphrys: The thought behind that section is that it is most important in carrying out supervisory responsibilities to know who controls the company, who operates the company. I think it must be recognized that however good the supervisory legislation is, or however vigilant the supervisors are, the real protection for the creditors of a company, for the policyholders, for the depositors,

lies in the skill, integrity and trustworthiness of the management. Consequently, it is very important that supervisors know who owns the company, who operates it, and to know when ownership is changed, because a change in ownership leads to a change in policy.

Much of the supervisory procedure depends upon knowing a company and the consistency of the way in which the company operates, its management, policies and practices from period to period. When control changes policies may change. This gives prior notice so that the supervising authorities can, if they think fit, meet with the new owners, the new shareholders, to establish communication, to make sure that the legislative requirements are known, to learn for themselves what policies the new owner may have in mind before they are implemented, and if need be to step up the degree of supervision. In summary, the provision would ensure prior notice of an event that may make a significant change in management policies.

Senator Lang: Could you explain this ten or more per cent change in the shareholding requiring proper notice?

Mr. Humphrys: Any transfer of a block of stock that exceeds ten per cent of the total issued stock, or any transfer that in the opinion of the company will effect a change in control.

Senator Lang: I am just assuming a transfer of that percentage of stock made without the company having any knowledge of it.

Mr. Humphrys: No, because the act provides that the transfer is not valid for the purpose of the company until it is registered on the books of the company. A transfer might be made and might establish rights between the vendor and purchaser, but it would not be recognized by the company so that the purchaser would not have any voting rights, or receive any dividends until the transfer is made on the books of the company.

Senator Lang: My point is that you could conceivably transfer, say, 15 per cent of the shares of the company; they could be transferred on the books of the company. How would the company give ten days' prior notice, having had no knowledge of the transfer until it appeared on the register?

Mr. Humphrys: The company is in control of its own register and it would be prohibited

from entering that transfer until it had made sure the Superintendent had 30 days' notice.

Senator Lang: Prior notice?

Mr. Humphrys: They just have to hold up the transfer until the 30 days have expired.

The Chairman: Are there any other questions...

Now Mr. Humphrys, I understand you were proposing an amendment.

Mr. Humphrys: Yes, Mr. Chairman. In connection with the new section 33, on page 17. This section deals with prohibited investments and loans that are not at arm's length.

Subsection (4) has for its purpose the tracing of ownership of shares through intervening corporations. We use the word "shares" there. This amendment proposes to replace that word by "equity shares", which are defined as shares carrying voting rights. That is the effect of that amendment.

The Chairman: Yes.

Mr. Humphrys: The other amendment is in the following subsection (5), and the amendment proposes a revision in wording of that subsection which will have the same effect, but it is an improved wording. After this was printed we discovered a defect in the wording and this amendment changes the wording without changing the principle.

Senator Croll: What is the definition of equity shares?

Mr. Humphrys: That is defined on page 16 of the bill, Senator Croll, as follows:

(c) 'equity share' means a share of any class of shares of a corporation to which are attached voting rights exercisable under all circumstances and a share of any class of shares to which are attached voting rights by reason of the occurrence of any contingency that has occurred and is continuing;

The Chairman: Now, you have given me, Mr. Humphrys, a draft of the proposed amendments. They fall into four numbers. They all deal with page 17 of the bill. For purposes of the record, I take it when the committee hears them it will be accepted that clause 8 of Bill S-35 be amended as follows:

(a) by striking out line 5 on page 17 thereof and substituting therefor the following:

'to own beneficially, equity shares of a corpora-';

(b) by striking out line 8 on page 17 thereof and substituting therefor the following:

'proportion of the equity shares of any other';

(c) by striking out line 12 on page 17 thereof and substituting therefor the following:

'shall equal the proportion of the equity shares'

(d) by striking out lines 18 to 27 on page 17 thereof and substituting therefor the following:

Exception

'(5) Notwithstanding subsection (4), a company is not prohibited from making an investment in a corporation only because a person or a group of persons that owns beneficially, directly or indirectly, or is deemed to own beneficially, equity shares of the company is by reason thereof deemed to own beneficially equity shares of the corporation.'

Now, are there any questions on that?

Senator Lang: I am not quite sure what it means, Mr. Chairman.

The Chairman: I am not sure myself what the last "deemed" means. What does that mean, Mr. Humphrys?

Mr. Humphrys: Subsection (4) indicates that, if a person owns shares in a corporation, he is deemed to own a proportion of any shares that that corporation owns, and the purpose of this is to prevent the requirements of this section being circumvented by the insertion of a corporate screen between a shareholder and the company that he is concerned with. Thus, if a person owns shares in a holding company and the holding company has a subsidiary, this section will trace his ownership through the holding company and measure it in the subsidiary. But, if we let this stand alone, it would mean that an insurance company could not make a loan to its own subsidiary because its own shareholders would be deemed to have a significant interest in the subsidiary. So the purpose of subsection (5) is to say that a company is not prohibited from making a loan to a corporation only because one of its own shareholders is deemed to own shares in that corporation. So, subsection (5) will enable an insurance company to lend to its own subsidiary; it sets

aside the effect that would otherwise be produced by subsection (4) in deeming that the shareholders of the insurance company have a significant interest in the subsidiary.

Senator Lang: I will take your word for it that that is what that means.

Senator Benidickson: Mr. Chairman, on this point, Senator Lang, a distinguished lawyer, says that he does not understand all of that. I note that clause 8 of this bill involves five pages before we get to clause 9 of the bill, and I want to ask Mr. Humphrys, who is a friend of mine, if he thinks he gives parliamentarians adequate information in the drafting of bills in the explanatory notes, for here we have before us a copy of what is in the old act, which is just a few sentences so far as section 33 is concerned. My complaint is that I do not think parliamentarians are given adequate explanatory notes for matters involving five pages of changes in a statute.

The Chairman: Well, this is the section that deals with prohibited investments, and you have quite an enumeration of them. The last subsection we were talking about is by way of exception from this prohibition, as I understand it.

Senator Benidickson: Yes, but we are given as laymen an explanatory note in the right-hand part of the bill which simply reintroduces what is in the old act; but it requires four or five pages of new words to tell us what we are going to do now. I don't think the explanatory notes are in keeping with the changes.

The Chairman: What you are saying, senator, is that the explanatory note should tell you what the amendment does instead of just telling you what they have removed.

Senator Benidickson: Yes.

The Chairman: Yes.

Senator Benidickson: I think they used to.

Senator Walker: I thought the Superintendent explained this earlier.

The Chairman: Not in any detail. But Mr. Humphrys will explain it now, because it is an important section.

Mr. Humphrys: The explanatory note is brief, Senator Benidickson. There is no question about it. It merely says that the purpose is to prohibit making loans or investments that are not at arm's length. That is, in fact,

the purpose of this section. There is always the question, however, of how far one should go in the explanatory notes in paraphrasing the legislation itself. This gives the object of the section and almost any explanation that you give, clause by clause, would have to, perhaps, be a paraphrase of the legislation itself. But it is an important section and I think that it is well that I give some explanation of it.

Senator Benidickson: Just before you do that, may I say that, in respect of the future, Mr. Humphrys has many bills coming before the Senate. Sometimes we don't get bills until we arrive in committee. Therefore, I think there should be, in laymen's language on the right-hand page, as there used to be, adequate explanatory notes.

The Chairman: We will now do the next best thing. We will hear Mr. Humphrys' explanation.

Senator Walker: My understanding is that the senator understands that, but in the future he thinks we ought to have better explanatory notes.

The Chairman: Yes, but since the point has been raised, I think Mr. Humphrys should give an explanation.

Mr. Humphrys: The present act prohibits the company from making loans to an officer or a director or any member of the immediate family of an officer or director. These amendments propose to expand that prohibition to prohibit loans to a substantial shareholder whether that substantial shareholder is a corporation, an individual or a group of persons made up of an individual and his immediate family. So there we have the categories of an officer, director and major shareholder, and for the purpose of deciding if an individual is a major shareholder we group together the individual, his wife and minor children.

A major shareholder or a substantial shareholder, as the phrase is used in this act, is defined as a person who owns more than 10 per cent of the stock. So therefore we have a group of persons, consisting of officers, directors, their immediate families and substantial shareholders, who have or who can reasonably be considered to have a significant influence on the decisions of the company, or to be in a position to exercise an influence on them. This amendment provides that the company cannot make a loan to those persons, or,

if the shareholder is a corporation, to make an investment in the corporation.

I should, of course, point out that it is stated that the company shall not knowingly make an investment. There may be cases that are hard to discover, and it is not proposed to impose a penalty if the company making an investment or loan that is contrary to this provision did not know that it contravened the requirements. It goes on to provide that if the company does find out that the investment or loan was one that is prohibited, then it should not continue to hold it.

The second category that is prohibited is an investment or loan to another corporation if any of the group mentioned previously has a significant interest in the other corporation, that is if an officer, director or major shareholder has a significant interest in the corporation, significant interest being a holding of more than 10 per cent of the capital.

The basic structure of the section then, is to define a group of persons who are in a position to exercise influence on the investment decisions of the company, to provide first of all that the company may not make loans to or investments in a member of that group, and secondly that it may not make loans to or investments in any corporation where any member of that group has a significant interest. The purpose is to try to ensure, in so far as it can be done by legislation of any reasonable length and complexity, that the investment decisions of a company are made free from a conflict of interests.

Subsection (3) defines what is a significant interest and what is a substantial shareholder, as I have just mentioned. A substantial shareholder is defined as one who owns more than 10 per cent of the equity shares, that is, the voting shares, and that in turn leads to the requirement to define "equity shares" in paragraph (c) on page 16. Then in paragraph (d) "investment" is defined in order to bring a loan to a company within the ambit of an investment. Paragraph (d) also provides that an investment in this sense does not include any normal working balances between insurance companies or any loan or debt that may arise that is purely ancillary to the main operation of the company.

Paragraph (e) defines an officer.

Subsection (4) is the one I explained previously and I might add a further word on that. Where a director, for example, has a major interest in a holding company and that hold-

ing company has a wholly owned subsidiary, the effect of subsection (4) is to indicate that that director is deemed for this purpose to have a significant interest in the subsidiary; the effect is that the purpose of the provision cannot be defeated by interposing a corporate screen between the persons we are dealing with and the corporation in which an investment is under consideration.

Subclause (5) is the exception which I have explained that enables an insurance company to make a loan to or an investment in its own subsidiary which would otherwise be prohibited by reason of an officer, director or major shareholder being deemed to have a significant interest in that subsidiary through the insurance company itself.

Subclause (6) permits the Minister to grant an exemption in places where he is satisfied that the persons in respect of whom the prohibition would otherwise arise do not and have not exercised any influence in the investment decisions and where the investment did not significantly affect their interests. This clause may appear complex, by the attempt here is to go far enough in legislation to establish the principle and make it clear that loans and investments where there may be a conflict of interests are prohibited. It is recognized that once you have this type of legislation, if one were attempt to pursue every possible twist and turn, the complexity of division and subdivision that would arise in the ingenuity of man, you would have pages and pages of legislation. The effort here is to enable these matters to be kept within some reasonable bound of complexity.

The Chairman: I have put the amendments. Are they carried?

Senator Benedickson: Mr. Chairman, I have a feeling that this legislation comes forward because of some unhappy experience in the past because we didn't have these provisions in the act. Is that right?

The Chairman: Well, you can ask Mr. Humphrys.

Senator Benedickson: Would Mr. Humphrys indicate that we have been burned by some troubles in the past because we did not have these provisions in the legislation.

Mr. Humphrys: Yes, senator, that is in fact the case. There have been cases where investments and loans were made where there was a conflict of interests and in some cases they gave rise to very serious situations and in

other cases they gave rise to problems that were really very grave and which led to situations where company failure was averted only very narrowly indeed. With the growth of corporate groups and the tendency to move more into the field of subsidiaries, and where you see financial groupings being formed, I think it becomes more and more important to see to it that companies of the nature of insurance companies and other companies that raise large amounts of funds from the public make the investment decisions respecting those funds free from any conflict of interest and free from interests that may arise on the part of major shareholders in associated companies. Only in this way can we hope to see or arrive at the position where the investment of funds that are raised from the public through insurance premiums, through acceptance of deposits or the sale of trust certificates or debentures are invested with the best interests of the company in mind, and to achieve the maximum of security for the public.

Senator Benidickson: But we have had some unfortunate experiences due to the lack of this type of legislation, is that correct?

Mr. Humphrys: Yes, senator.

The Chairman: Is the amendment carried?

Hon. Senators: Carried.

The Chairman: Mr. Humphrys, there is a question I want to ask you on segregated funds. You are making a change and are permitting a company to operate segregated funds without any liability for the loss or any right to assume any of the gains. Does this put them in the position of being managers or trustees of various segregated funds? Is that about the position it puts them in?

Mr. Humphrys: The right of a life insurance company to operate this type of fund stems from their corporate powers to issue contracts generally, so the contracts they issue, and against which they have assets in segregated funds, must be ones they issued in carrying out their corporate powers. So there must be involved some degree of insurance, some element of insurance, some justification or connection with the corporate powers of the company itself. We have taken the view that companies cannot, through these segregated funds, issue a straight investment contract where they do nothing but manage the fund and no risk falls back on the company.

The Chairman: There must be an element of insurance?

Mr. Humphrys: Yes. The point you raised is the point that led to the proposal here to enable companies to form subsidiaries for the purpose of offering investment opportunities to the public; and, if they wish, they will, through a subsidiary company, do a straight investment business where they act as managers of the fund, either directly or through a subsidiary management company.

The Chairman: But you made reference to a mutual fund. Where would the element of insurance come in there?

Mr. Humphrys: There would not be any element of insurance there. This bill proposes a new right to form a subsidiary company as a mutual fund, and this is not the same as the segregated fund.

The Chairman: Are there any other questions?

Senator Lang: I am not sure whether counsel for the Insurance Companies Association may be in this room today.

The Chairman: I am going to call on them. I indicated that the insurance company representatives are here, and if they have amongst themselves agreed on a voice, then he will be heard. If not, we will hear them all and ask them for their comments on this bill—what, if anything, they have to say against the bill, or whether they support the bill.

Mr. MacGregor, are you going to speak, in the first instance?

Mr. K. R. MacGregor, President, Canadian Life Insurance Association: Yes, Mr. Chairman.

The Chairman: May I welcome you to this committee in your new capacity?

Senator Benidickson: Mr. Chairman, I would just like to put on record that we have seen Mr. MacGregor for many years with another cap, as Superintendent of Insurance and an adviser we appreciated over the years. Today he is before us in another role—I think he is President of this Association. We always felt fairly safe with his advice in the past, and I am sure that the same sentiment prevails now.

The Chairman: May I add these words: Do not stay away so long, Mr. MacGregor. We used to like your coming here.

Mr. MacGregor: Mr. Chairman and honourable senators, may I say what a pleasure it is to have the privilege of appearing before this committee again after a lapse of five years or more.

When I look at the thickness of this bill, it takes me back about 20 years, to 1948, I think, when a very thin bill was before this committee to amend the Insurance Acts. There had been amendments to the acts nearly every year or two for some period before that, and I recall one honourable senator asking whether it would not be possible to come forward with a wholesale revision and be done with it for perhaps 10 years, as in the case of the Bank Act.

Two years later, in 1950, quite a thick bill was before this committee, designed to end all revisions of the Insurance Acts for 10 years, or thereabouts, but, as I recall it, it was less than a year before I was back before this committee again, in 1951, and there were further amendments—and in 1956, 1957, 1958, I think, a fairly substantial revision in 1960, and another bulky bill in 1965.

This, of course, is the bulkiest of all. I think, if it indicates anything, it surely indicates that the business of insurance is a very vital one and is certainly anything but a dead or a moribund business.

Notwithstanding the bulk of the bill, the member companies of the Canadian Life Insurance Association—which companies transact about 99 per cent of the life insurance business in Canada—have no objection to the provisions of this bill. In many cases they are heartily in favour of them, and that is understandable, perhaps—more particularly the provisions that expand the powers of companies to some extent. With these expanded powers we think the companies can better serve the Canadian public.

On the restrictive side, we quite understand the reasons that have prompted stronger provisions respecting supervision, and we are quite prepared to accept them.

As far as incorporation of companies by a different route, by the Letters Patent route, is concerned, I think it is fair to say that most companies likewise welcome that proposal, especially having in mind the difficulties that have been encountered in recent years in getting special acts through. Personally, I rather

regret this change in procedure. I see no objection to it whatever as far as making amendments to existing acts are concerned for certain specific purposes—increasing the capital of a company, changing the name, adding a French or English version and so on—but I was early wedded, I am afraid, to the rather special status of a company incorporated by special act. I saw advantages in it, but I quite realize that present-day conditions seemingly make the continuation of that route alone an inconvenient if not an impracticable one.

I think there is very little I can say on the provisions of the bill: we have been through it; we have no objection to any of the provisions in it.

The Chairman: Nor to the amendments?

Mr. MacGregor: Nor to the amendments.

Senator Walker: I move we report the bill.

The Chairman: Are you speaking on behalf of the association?

Mr. MacGregor: Yes, Mr. Chairman, I am.

Mr. Humphrys: Mr. Chairman, I want to mention one further point, and that is in connection with the new procedure for incorporation.

Hitherto, there has not been in the legislation any requirement for minimum capital for a new company. Since each bill has come before Parliament, each case has been considered on its merits. It was thought that if an administrative procedure is to be used for incorporating companies, there should be a statutory limitation for capital. It is \$2 million of capital and surplus for life insurance companies, to start with; and \$1½ million of capital and surplus in the case of a fire and casualty insurance company.

Senator Leonard: Paid up?

Mr. Humphrys: Yes.

The Chairman: Is there a motion to report the bill with the amendments?

Hon. Senators: Agreed.

EVIDENCE

The Chairman: Honourable senators, we now have for consideration Bill S-36.

Mr. R. Humphrys, Superintendent of Insurance: The bill with which the committee has just dealt, Bill S-35, an act to amend the Canadian and British Insurance Companies Act, deals mostly with Canadian companies, but has one part dealing with British companies. Bill S-36, the Foreign Insurance Companies Act, does for foreign companies exactly what the British part of the Canadian and British Insurance Companies Act does for British companies. This peculiar split in the two bills stems from constitutional problems in years gone by and has no other significance.

The Chairman: To what extent Bill S-36 is a duplicate of Bill S-35? Certainly in paging it is not.

Mr. Humphrys: It is a duplicate to the extent that the amendments it effects applicable to foreign companies are the same in effect as the amendments in Bill S-35 applicable to British companies. The last few sections in Bill S-35, for section 43 through to section 48, deal with British companies.

The Chairman: The same subject-matter.

Mr. Humphrys: It is a little thinner because in Bill S-35 some of the legislation applicable to British companies is accomplished by cross reference to sections that apply to Canadian companies. In the foreign act the provisions had to be spelled out in full.

The Chairman: There are of course, some provisions in bill S-35 relating to Canadian companies that are not relevant. Is that right?

Mr. Humphrys: That is correct.

Senator Beaubien: Do you have an amendment to Bill S-36?

Mr. Humphrys: No, there is no amendment, because the provision we discussed about prohibiting loans and investments does not apply to foreign companies.

The Chairman: Are there any questions?

Again, is there any person present who wishes to speak? Mr. MacGregor?

Mr. K. R. MacGregor, President, Canadian Life Insurance Association: No, Mr. Chairman, we have no further comments.

The Chairman: You are in favour and you have no objections?

Mr. MacGregor: We are in favour and we have no objection whatsoever.

Senator Desruisseaux: I move that we report the bill.

Hon. Senators: Agreed.

EVIDENCE

The Chairman: We now come to Bill S-37 dealing with trust companies.

We have here, Mr. Walter A. Bean, the Deputy Chairman and Vice-President of the Canada Trust Company and Huron and Erie Mortgage Corporation and Past President of the Trust Companies Association of Canada; Mr. E. D. L. Miller, Assistant General Manager, Finance, Canada Trust Company and Huron and Erie Mortgage Corporation, and Mr. E. F. K. Nelson, Executive Director of the Trust Companies Association of Canada. First we will hear Mr. Humphrys.

Mr. R. Humphrys, Superintendent of Insurance: Mr. Chairman and honourable senators, this bill proposes to effect amendments in the Trust Companies Act. Many of the provisions are parallel to those that I described for the Canadian and British Insurance Companies Act, namely, a change in the system of incorporating companies and amending existing charters. It is proposed to require a minimum of \$1 million capital and surplus for the formation of a trust company. The provision concerning investments and loans where there may be a conflict of interests is included here following the provision in the insurance act. The change in the flexibility of control by the supervisors is, as nearly as possible, parallel in this bill to what was proposed in the insurance act. The explanation of the granting of power to trust companies to own subsidiaries is brought closely into line with the powers proposed for insurance companies. This amendment is not only to parallel amendments that are proposed in the present insurance act, but also amendments made in relation to insurance companies in 1965.

There are, however, a number of features in this bill that I think merit some special comment, since they apply to trust companies and not to insurance companies.

In connection with the investment powers, trust companies are now substantially confined to investing in Canadian securities. They have the power to invest in the securities of some foreign governments, the United Kingdom and the United States, but other than that they are confined to Canadian securities. This has the consequential effect of pretty well confining them to business in

Canada. If they wanted to do business outside the country they could not invest in any securities in that jurisdiction and it would be hampering and perhaps impossible for them to carry on, or to conduct, trust company business. Amendments are proposed here to enable them to invest in investments of the same quality as are defined in the bill in any country in which they are doing business.

Senator Benidickson: Could they at the present time form a subsidiary in a foreign country?

Mr. Humphrys: Not at the present time. This bill proposes that they be able to do so. At the present time trust companies have a basket provision. It is related to the company's own funds and is 15 per cent of the company's capital and surplus. In that connection, perhaps I should mention that in a trust company its assets are really divided into three categories. First, there are the company's own funds, which are made up of capital and surplus and retained earnings. There are the guaranteed trust funds, which are the funds that arise from an acceptance of deposits from the public and from the sale of guaranteed investment certificates. All of these funds are trust funds of a special type; they are trust funds where the company guarantees the repayment of the principal, and usually guarantees payment of a specified rate of interest. They must keep the assets separately segregated and earmarked in relation to the guaranteed trust obligations. The third category are the estate, trust and agency funds, where the company act as trustee or manager but without any guarantee on the part of the trust company as to the repayment of the principal in any fixed dollar amount or the payment of interest.

To go back, the existing basket is a percentage of the company's own funds. It is proposed here to give them a broader basket power, for the company to invest guaranteed trust funds to the extent of 7 per cent of the fund within the company's own discretion. This is a basket provision parallel to the basket given to life insurance companies some years ago. Certain other investment powers of trust companies would be changed by this amendment, in the direction of bringing them into line with the investment powers that have been granted to insurance companies by this or previous amendments.

There are two other important points. One is in relation to the borrowing limits. Trust companies are now limited to a maximum of

funds accepted from the public by way of deposits or proceeds from the sale of guarantee investment certificates equal to 15 times their capital and surplus. This means that they have to have a margin of capital and surplus of $6\frac{1}{4}$ per cent of their liabilities. This proposes to raise that borrowing power limit to 20 times, subject to approval by the Minister on application by the company.

It is proposed to insert a liquidity provision in the act whereby companies would be required to maintain at least 20 per cent of their demand liabilities and liabilities falling due within 100 days in the form of readily realizable assets; specifically, cash, federal Government bonds and provincial government bonds. The liquidity test is quite parallel to that in other trust company legislation in the provinces.

Senator Benidickson: How does that compare with existing legislation?

Mr. Humphrys: There is no specific legislative requirement for liquidity in the Trust Companies Act at the present time, senator. There is such a provision in the Loan Companies Act, but as a matter of practice, trust companies have followed careful management practices in that regard and their liquidity position has been adequate to meet their obligations.

It is proposed, however, to write such a provision into the statute to make the legislative requirements parallel to those that are now in the trust company legislation of some of the provinces and, really, to recognize in legislation the desirability of this management practice.

Senator Benidickson: This is an authoritative statement as to liquidity.

Mr. Humphrys: It is a minimum statutory requirement.

Senator Benidickson: This is new?

Mr. Humphrys: Yes, this is new legislation.

The Chairman: Yes.

Mr. Humphrys: There are requirements for the filing of quarterly statements with the Superintendent to enable a close check to be kept on liquidity and on requirements for semi-annual statements of purchases and sales of investments so that the movement in the investment account can be followed in a closer fashion than has hitherto been the case.

There are a number of other amendments dealing with administrative matters and correction or improvement of wording.

I think, Mr. Chairman, that together with the explanations of the matching provisions of the Canadian and British Insurance Companies Act, that is all I have to say.

The Chairman: What you are referring to is the valuation of securities, a provision which will follow what you have provided in the Life Companies Act.

Mr. Humphrys: No, senator. The amendment that I referred to in the insurance Act had to do with the valuation of the assets of a fire and casualty insurance company. There was no such provision in respect of life companies.

The Chairman: Is there any case here in relation to the percentage or ratio of the investments in different types of securities, mortgages?

Mr. Humphrys: The change that I mentioned in connection with the insurance companies, that is, the power to invest in mortgages that exceed 75 per cent of the value of the real estate where the excess is insured, is proposed here for the trust companies as for the life companies. It is proposed here that trust companies be given power to invest in real estate for the production of income where the real estate is leased to a corporation whose shares are eligible investments, without being subject to the present maximum limit. At the present time, companies are limited to 10 per cent of their assets. In that type of investment, this limitation would be taken off and this would put them in the same position as life insurance companies.

Senator Benidickson: Mr. Chairman, from the rather frequent attendance before this committee of Mr. Humphrys, I get the impression that his responsibility and authority are being constantly enlarged. How is that reflected in personnel and bodies in the Department of Insurance?

The Chairman: Do you mean staff?

Senator Benidickson: Yes.

Mr. Humphrys: It is not adequately reflected. We have been able to carry out our duties with minimum increases in staff. We recognize, however, that additional duties are coming on us as a consequence of these amendments and other problems that arise in the supervisory fields. If an adequate and successful pattern of supervision is to be maintained, our staff will have to expand to keep pace with the expansion in the financial

institutions and, indeed, in the complexity of the problems that are arising in these fields.

It is not easy, of course, to accomplish this because there are never enough good people to go around and it is hard to get staff of the quality that you need to do the kind of job that we would like to do in connection with our supervisory responsibilities.

Senator Benidickson: How large in numbers or bodies would your branch be at the present time?

Mr. Humphrys: We have about 125 employees, senator.

Senator Leonard: How many actuaries have you?

Mr. Humphrys: About 14 qualified actuaries, senator.

Senator Willis: I for one have complete confidence in Mr. Humphrys' ability to reorganize his department.

The Chairman: Even Mr. Humphrys will tell you that you have to give him the tools in the way of appropriate legislation and in the way of satisfactory bodies.

Senator Willis: Yes.

The Chairman: I understand that there are several amendments, Mr. Humphrys. Would you care to discuss those?

Mr. Humphrys: One amendment, senator, is in connection with investment powers. I was just saying that one of the amendments proposed is to expand the power of the company to invest in real estate for the production of income where the real estate is leased to a corporation and the lessee meets certain specified tests. At present, companies can invest in this type of real estate, if the real estate is leased to a corporation that has a five-year dividend record. Now, it is proposed, or was proposed in the amendments, that that power be extended to enable this real estate to be purchased, if it is leased to any corporation whose shares qualify as an investment. But in the bill before you, the old wording was picked up rather than the change that we proposed, and the amendment is for the purpose of correcting that.

The Chairman: Which one is this?

Mr. Humphrys: This is Bill S-37, page 33.

The Chairman: And the proposal is to strike out lines 12 to 27 on page 33 and substitute the following:

by—

(A) the government, or an agency of the government, of the country in which the real estate or leasehold is situated or of a province, state or municipality of that country, or

(B) a corporation, the preferred shares or common shares of which are, at the date of investment, authorized as investments by paragraphs (h) or (j), or by those paragraphs as modified by section 68A,

The Chairman: So this amendment carried?

Hon. Senators: Carried.

Senator Molson: Before we go on I would like to ask one more question which follows on that asked by Senator Benidickson a moment ago. Mr. Humphrys has been a very welcome witness here and he is one in whom we always have confidence. Now we have just been asking about the size of this department and a number of staff involved. In addition to the Insurance Companies and Trust Companies and Loan Companies Acts, for what other acts do you have the responsibility of supervision?

Mr. Humphrys: We have the Canadian and British Insurance Companies Act, the Foreign Insurance Companies Act, the Trust Companies Act, the Loan Companies Act, the Small Loans Act, the Co-operative Credit Association Act, and the Pension Benefits Standards Act. Then we also have the Civil Service Insurance Act.

Senator Benidickson: I notice that the Co-operative Credit Insurance Act is there. Does not a great deal of this come under provincial jurisdiction?

Mr. Humphrys: Ours is the Co-operative Credit Association Act. What you are speaking of deals with co-operative associations generally. Those are all the acts we are directly responsible for. We do administer part of the Excise Tax Act having to do with the taxation on insurance premiums at the federal level. We report to the Minister of Finance. Our actuarial branch performs actuarial services for the government and for other government departments who may need actuarial advice in connection with government service programs.

Senator Molson: That is you advise any government department requiring actuarial advice?

Mr. Humphrys: Yes.

Senator Lang: What about the Deposit Insurance Act.

Mr. Humphrys: The superintendent of insurance is ex officio a director of the Canadian Deposit Insurance Corporation and the department has provided a staff of supervisory advisors for the corporation so that they too are shown on the staff of the department.

The Chairman: You will soon need another room you have so many places to hang your hat.

Now there is another amendment which is similar to the one made to the Life Insurance Companies Act. This is on page 44 of the bill.

Mr. Humphrys: This amendment is the same as was proposed for the Insurance Companies Act and it has to do with the clause prohibiting investments or loans that are not at arm's length.

The Chairman: The proposed amendment is as follows:

That clause 25 of Bill S-37 be amended as follows:

(a) by striking out line 12 on page 44 thereof and substituting therefor the following:

"to own beneficially, equity shares of a corpora-";

(b) by striking out line 15 on page 44 thereof and substituting therefor the following:

"tion of the equity shares of any other corpora-";

(c) by striking out line 19 on page 44 thereof and substituting therefor the following:

"The proportion of the equity shares of the first"

(d) by striking out lines 25 to 34 on page 44 thereof and substituting therefor the following:

(5) Notwithstanding subsection (4), a trust company is not prohibited from making an investment in a corporation only because a person or a group of persons that owns beneficially, directly or indirectly, or is deemed to own beneficially, equity shares of the trust company is by reason thereof deemed to

own beneficially equity shares of the corporation.

Shall this amendment carry?

Hon. Senators: Carried.

The Chairman: These are the amendments. Are there any other questions you want to ask Mr. Humphrys?

Shall I report the bill with the amendments?

Hon. Senators: Agreed.

Senator Leonard: Is there anybody to speak on behalf of the companies?

The Chairman: Yes, we have representatives here from the Trust Companies. Has some person been delegated to be the speaker?

Mr. Walter A. Bean (Deputy Chairman and Vice-President, Canada Trust Company & Huron And Erie Mortgage Corporation): Mr. Chairman and honourable senators, this bill embodies many of the things we wanted for a long time, some of which we have wanted since before the Royal Commission on Finance. Therefore we welcome this bill and support it and we have no amendments to offer.

The Chairman: Are the amendments that have been proposed today acceptable to you?

Mr. Bean: Yes, they are.

The Chairman: Are there any questions you want to ask Mr. Bean?

Senator Lang: I do not have a question to ask of Mr. Bean, but he may be interested in the questions I want to ask of Mr. Humphrys. Is it proposed shortly to incorporate all these amendments in a new printed form of the act? It is getting very difficult to follow all these amendments for a lawyer or an officer in one of these companies.

Mr. Humphrys: I understand it is proposed by the Department of Justice to embark upon the revision of the Statutes. They expect to have this completed by the fall and subsequently these acts among others will be produced in consolidated form in the Revised Statutes when they are printed which probably will be early in the new year. We cannot do it ourselves. We have to go through the Department of Justice for this. When they are busy trying to consolidate all the statutes they would not welcome our appearing at their

door and saying "Take us first." We tried it but our reception was not very favourable. I think by the end of this year or early next year we should have them revised and consolidated.

The Chairman: The motion has been made and carried that we report the bill without amendment.

EVIDENCE

The Chairman: This is Bill S-38, to amend the Loan Companies Act. Mr. Humphrys is here and will explain the bill.

Mr. R. Humphrys, Superintendent of Insurance: Mr. Chairman and honourable senators, the amendments proposed for this act parallel those which we have already discussed in connection with the two previous acts.

The Chairman: Are there any differences?

Mr. Humphrys: There is the change in the system of incorporation as I have already described. The proposed minimum capital for mortgage loan companies is \$500,000 instead of \$1 million for trust companies and the larger amounts for insurance companies. The smaller amount is proposed because we have had experience with the formation of some quite small companies that want to do a relatively local business, and it was felt that we should leave the way open for the formation of smaller companies where that can be done to serve a special area.

The Chairman: Actually I meant was there any difference in this Bill S-38 from the amendments proposed for Bill S-37?

Mr. Humphrys: I am just surveying it in my mind. There are a few points where the wording is different. That point of the minimum capital is different. I thought for that reason it was worth mentioning. There are more changes in the investment provisions in this bill than in the Trust Companies Act and the Insurance Companies Act, but the effect is only to bring the powers of these companies into line with those for insurance companies and trust companies. Now this was not done in previous amendments and the opportunity was taken here to try to bring the three groups into line. So while that there are more amendments here, they do not establish any new principles.

The point about excess mortgages is included here as in the other cases.

The power to operate their own subsidiaries is expanded somewhat as compared with the present act, but is again parallel to the powers that would be given to trust companies and insurance companies. There is one small point here; at present mortgage loan companies are specifically prohibited from making loans on the security of promissory notes, but there is no such prohibition in the case of trust companies. Now one of the purposes of granting a basket provision to the trust companies and to loan companies was to enable them to exercise their discretion in loans and investments, and some of them will wish to make consumer loans to their customers, at least to serve their deposit customers. In order to make that effective as respects mortgage loan companies the prohibition against lending on the security of promissory notes had to be removed. Consequently, one of the amendments here proposes to repeal that prohibition.

Senator Giguère: Is there a limit on the amount?

Mr. Humphrys: It would be a maximum of 7 per cent of their assets; that is the basket provision.

I think, Mr. Chairman, that there are not any other points of sufficient importance to draw to your attention. The Loan Companies Act now calls for a requirement for a liquidity reserve, and that is proposed to be changed to parallel the one that was inserted in the bill for the Trust Companies Act, so they would be parallel. Other than that, Mr. Chairman, I think that the amendments proposed for the loan companies are very parallel to those proposed for the trust companies.

The Chairman: I see that there are two amendments which are proposed similar to the amendments proposed to the Trust Companies Act.

Mr. Humphrys: Yes, to deal with exactly the same matters.

The Chairman: If you look at page 28 of the bill you will see the same point is dealt with as is dealt with in the Trust Companies Act.

Senator Leonard: That is the leasehold investment?

Mr. Humphrys: That is correct.

The Chairman: And the same amendment is proposed, and the amendment is that lines

3 to 18 on page 28 be struck out and that there be substituted therefor the following—and this fits into your (A) and your (B), on page 28 and following—and those are as we read them in the Trust Companies bill:

(A) the government, or an agency of the government, of the country in which the real estate or leasehold is situated or of a province, state or municipality of that country, or

(B) a corporation, the preferred shares or common shares of which are, at the date of investment, authorized as investments by paragraph (d) or (e), or by those paragraphs as modified by section 60A.

Is the amendment so moved?

Hon. Senators: Agreed.

The Chairman: Carried?

Hon. Senators: Carried.

The Chairman: The other amendment is similar to the one we made in the Trust Companies Act and in the Life Companies Act. This is on page 37 of the bill, and the proposal is that we strike out a number of lines and substitute—this is in the prohibited transactions—the series (a), (b), (c) and (d) to read as follows—and you strike out line 12 on page 37 and you substitute:

to own beneficially, equity shares of a corpo-

Then you strike out line 15 on page 37 and substitute:

proportion of the equity shares of any other

If you follow these and read them into the context, it will make sense. My reading is not enough to give you the meaning. Then in (c), by striking out line 19 on page 37 and substituting:

shall equal the proportion of the equity shares

In addition to all that you strike out lines 26 to 35 on page 37 and substitute the following—and that is the same exception we put into the Life Companies Act and also the Trust Companies Act. Shall these amendments carry?

Hon. Senators: Carried.

The Chairman: Now we have the representatives of the loan companies here.

Mr. Walter A. Bean: Mr. Chairman, may I speak, again, on behalf of the loan companies and say that the same remarks I made on behalf of the trust companies apply?

The Chairman: I suppose you wish to say that you have struggled for some years to get the amendments and you are happy to get them?

Mr. Bean: Yes, and we support them all.

The Chairman: You support the bill and the amendments?

Mr. Bean: Yes.

Senator Molson: In all these bills one hears about the appointment of auditors. I think it is just tying it up. It is just a little more specific, is it not Mr. Humphrys?

Mr. Humphrys: It is to define more precisely the qualifications of the auditor.

Senator Molson: And those who are eligible?

Mr. Humphrys: Yes.

Senator Molson: There is no real fundamental change in this, is there?

Mr. Humphrys: No, sir.

The Chairman: Shall I report the bill with the amendments?

Hon. Senators: Agreed.



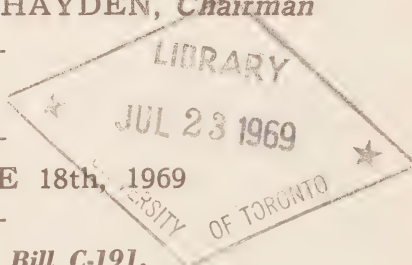
First Session—Twenty-eighth Parliament
1968-69

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE
ON
BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 44

WEDNESDAY, JUNE 18th, 1969



First Proceedings on Bill C-191,
intituled:

"An Act to amend the Income Tax Act".

WITNESSES:

The Canadian Life Assurance Association: J. A. Tuck, Managing Director;
F. C. Dimock, Secretary; E. G. Schafer, President, Dominion Life Assurance Company; A. H. Lemmon, President, Canada Life Assurance Company; G. C. Campbell, Vice-President, Metropolitan Life Insurance Company; D. E. Kilgour, President, Great West Life Assurance Company; K. R. MacGregor, President, Canada Life Assurance Company; H. E. Harland, Chairman, and Actuary, Great-West Life Assurance Company; A. M. Campbell, President, Sun Life Assurance Company of Canada; G. R. Berry, Vice-President and General Manager, Metropolitan Life Insurance Company; H. Belzile, President, Alliance Mutual Life Insurance Company.

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Lang
Aseltine	Desruisseaux	Leonard
Beaubien	Gelinas	Macnaughton
Benidickson	Giguère	Molson
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Inman	Welch
Connolly (<i>Ottawa West</i>)	Isnor	White
Cook	Kinley	Willis—(30)

Ex officio members: Flynn and Martin

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, June 17, 1969:

“Pursuant to Order, the Senate resumed the debate on the motion of the Honourable Senator Hayden, seconded by the Honourable Senator Denis, P.C., for the second reading of the Bill C-191, intituled: “An Act to amend the Income Tax Act”.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative, on division.

The Bill was then read the second time, on division.

The Honourable Senator Martin, P.C., moved, seconded by the Honourable Senator McDonald, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative”.

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

Wednesday, June 18th, 1969.
(48)

At 9:00 p.m. the Standing Senate Committee on Banking, Trade and Commerce proceeded to the consideration of:

Bill C-191 "An Act to amend the Income Tax Act".

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien, Benidickson, Burchill, Carter, Connolly (*Ottawa West*), Desruisseaux, Gelinas, Hollett, Isnor, Kinley, Phillips (*Rigaud*), Walker, Welch and Willis—(16).

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Resolved: That 800 copies in English and 300 copies in French be printed of the Committee proceedings on the said Bill.

The following witnesses were heard:

The Canadian Life Assurance Association:

J. A. Tuck, Managing Director, F. C. Dimock, Secretary, E. G. Schafer, President, Dominion Life Assurance Company, A. H. Lemmon, President, Canada Life Assurance Company, G. C. Campbell, Vice-President, Metropolitan Life Insurance Company, D. E. Kilgour, President, Great West Life Assurance Company, K. R. MacGregor, President, Canada Life Assurance Company, H. E. Harland, Chairman and Actuary, Great-West Life Assurance Company, A. M. Campbell, President, Sun Life Assurance Company of Canada, G. R. Berry, Vice-President, and General Manager, Metropolitan Life Insurance Company, H. Belzile, President, Alliance Mutual Life Insurance Company.

At 10:30 p.m. the Committee adjourned.

ATTEST.

Frank A. Jackson,
Clerk of the Committee.

THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

EVIDENCE

Ottawa, Wednesday, June 18, 1969.

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-191, to amend the Income Tax Act, met this day at 9.00 p.m. to give consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: We have for consideration now Bill C-191, and we have the representatives of the various life insurance companies here: Mr. E. G. Schafer, President of Dominion Life, and President of the Canadian Life Insurance Association; Mr. A. H. Lemmon, Chairman, Special Committee on Federal Income Tax, and President, Canada Life; Mr. K. R. MacGregor, whom we all know so well, the immediate past president of the association and President, Mutual Life; Mr. J. A. Tuck, the Managing Director; Mr. F. C. Dimock, Secretary; Mr. H. E. Harland, Chairman, Technical Committee on Federal Income Tax who is with the Great-West Life; Mr. H. Belzile, President of Alliance Mutual; Mr. A. F. Williams, President of Crown Life; Mr. D. E. Kilgour, President of Great-West Life; Mr. G. R. Berry, Vice-President and General Manager of Metropolitan Life; Mr. A. M. Campbell, President of Sun Life; and Mr. G. C. Campbell, Vice-President, Staff Services—Taxation, Metropolitan Life Insurance Company.

I understand the procedure to be followed is that Mr. Schafer, who is President of the Association, will make an opening statement. At various stages in the course of that opening statement there may be segments of what he has to say that will be picked up and developed by other representatives who are here. Is that agreeable?

Hon. senators: Agreed.

Mr. E. G. Schafer, President, Canadian Life Insurance Association: Mr. Chairman and honourable senators, we certainly appreciate this opportunity to appear before your committee to discuss with you Bill C-191. The size and strength of our delegation should be some indication of the importance we attach to this bill. This is the first opportunity we have had to

present our views before a committee of Parliament, and for that reason we are gathering our main points together in the form of an opening statement, of which we have copies for honourable senators.

The Chairman: Yes, they have been distributed.

Mr. Schafer: We will proceed with the statement, which indicates that we represent 109 life insurance companies which transact more than 98 per cent of the life insurance and annuity business in this country.

We are here to help you examine the specific provisions of the tax bill and to make some observations.

Bill C-191 is more than just another taxation measure on an industry. The nature of the life insurance process is such that any major taxation, newly imposed, will affect patterns of saving, provisions for individual security and the form and substance of capital formation in our country. These problems make up the context and background against which those points of Bill C-191 respecting life insurance should be studied by honourable senators.

The basic and important issue is whether or not the introduction of new taxes on a major source of saving and capital formation makes sense at a time when Canada, along with most other countries in the western world, is facing a drastic shortage of capital, especially severe in the bond and mortgage markets.

This issue must be assessed in the light of pressing national problems such as controlling inflation and providing adequate housing. In our opinion, the decision to impose taxation on the life insurance process at this time runs counter to these national priorities.

Nowhere is this more evident than in the necessity to encourage savings as a means of counteracting inflation. There are some 11 million policyholders in this country who defer immediate consumption and spending to protect themselves and their dependents against future loss of income.

Life insurance is the primary savings instrument of the common man. Of the total amount of individual life insurance purchased in Canada in 1967, 60 per

cent was bought by people earning less than \$7,500 a year. About nine out of ten individual life insurance policies purchased contained a savings element; and, of course, annuity contracts are savings instruments. The new taxes will not, therefore, have the effect of reducing the stream of consumption expenditures. On the contrary, they are an incentive to avoid saving at a time when the Government and indeed all responsible economists are urging people to do precisely the reverse.

Then there is the housing problem.

As you know, life insurance companies have been the main institutional source of mortgage funds of all kinds in Canada. Their \$7 billion of mortgage loans outstanding represents two-thirds of institutional loans and more than one-quarter of mortgage loans of all kinds. In the post-war period, taking mortgage repayments into account, the life companies have loaned nearly \$12 billion for housing and an additional \$150 million or more has been invested directly in residential real estate. Since 1945, these mortgages and real estate investments have financed more than 1¼ million homes for Canadians.

To us, it seems to be inconsistent to remove at this time a sum of the order of \$100 million annually from the largest institutional source of mortgage funds.

Along with the need to encourage long-term, stable sources of capital in this country, these questions of inflation and housing have important national priority. The life insurance companies' operations do not run counter to these national objectives, but on the contrary, have been helping governments and the public to achieve these priorities and overcome some of Canada's pressing financial problems. It does seem strange that this particular time should be chosen to impose heavy new taxes on such a key source of savings and capital.

Mr. Chairman, I felt that these far-reaching considerations should be drawn to the attention of honourable senators, because we wonder if they have received the study they deserve.

Senator Walker: Before you go any further I should like to ask if you have ever had the opportunity of presenting this to a committee of the House of Commons?

The Chairman: I do not think there was a committee there. The bill was dealt with in the Committee of the Whole.

Senator Benidickson: What was the answer to that question?

Senator Walker: They have had no opportunity at any time to put forward their point of view. The bill was considered in the House of Commons by the

Committee of the Whole, and without any representation from the insurance companies.

The Chairman: I would expect that between the time the budget was announced and the time that the legislation was brought down there was an opportunity to make representations to the Government, and it may be that the association availed itself of that opportunity.

Mr. Schafer: To the Minister of Finance.

Mr. Walker: You made written representations?

Mr. Schafer: Yes, and verbally to the Minister of Finance.

Senator Walker: And only that?

Mr. Schafer: That is right. We come now to the new tax system.

By way of helping you with your examination and clarification of Bill C-191, perhaps we can now turn to some of the points in the new tax system that concern us. Our companies have some knowledge of life insurance tax systems abroad, and can say that the system proposed in the bill is unique—unique in design, unique in its complexity, and we believe unique in its weight. In this latter regard, we cannot help observing that in the United Kingdom and some Commonwealth countries the life insurance process is encouraged through the allowance of premiums as a deduction from policyholders' taxable income.

As you know, the first proposals for new taxes on life insurance in Canada were in the Carter Commission Report.

The Chairman: Are you expecting questions as you go along, or is somebody else going to step in at some stage?

Mr. Schafer: From our side?

The Chairman: Yes.

Mr. Schafer: I think that they will interrupt whenever they feel . . .

The Chairman: Well, I should like to ask a question at this point. At the top of page 4 you refer to the life insurance process in the United Kingdom and some Commonwealth countries, and say that it is encouraged through the allowance of premiums as a deduction from policyholders' taxable income. But, what is the tax structure itself in those countries, and how does it compare with what is proposed here?

Mr. A. H. Lemmon, Chairman, Special Committee on Federal Income Tax, Canadian Life Insurance Association: Perhaps I might comment on that, Mr. Chairman. There is a tax on the investment income of life insurance companies in Great Britain, less all the expenses of management of those companies. It is a bit like one of the sections of the Canadian tax, but with the deduction of total expenses rather than just a fraction of those expenses. I will come to that point later.

The Chairman: But is there an average rate of 15 per cent, or is it a graduated rate?

Mr. Lemmon: No, there is a special rate applying to life insurance companies of 37½ per cent, and that rate has been in existence for some years.

Senator Beaubien: That is very high, is it not?

Mr. Lemmon: Yes, but, on the other hand, as this memorandum points out, the individual policyholder is allowed to deduct from his income before personal income tax the premiums that he pays on life insurance subject to certain limitations. Certain calculations have been made by the Life Offices' Association in Great Britain, and it is estimated there that the two just about offset each other. In other words, the revenues that the Department of Inland Revenue gets from the life insurance companies just about offsets the tax relief that individuals get by deducting their premiums.

The Chairman: The is no corporate rate other than that of 37½ per cent?

Mr. Lemmon: There is no corporate rate other than the 37½ per cent. There was for a period during the war, and there was for a period a few years ago, but not at the moment.

The Chairman: Will you proceed?

Mr. Schafer: As you know, the first proposals for new taxes on life insurance in Canada were in the Carter Commission Report. The tax provisions in this bill now before you are considerably different from those proposed in the Carter Report.

The Carter proposals would have been unnecessarily severe on policyholders by taxing policy dividends and so-called "mortality gains." These proposals are not reflected in the bill. The bill also avoids an administrative nightmare for policyholders by taxing investment income at the company level instead of allocating it to individual policyholders and taxing it annually in their hands. We are therefore not unmindful of the fact that some of the points we have made to the Government have been met.

We come now to the weight of the tax. We estimate that under the formulae in the bill and draft regulations, the 1969 investment income and business income taxes on life insurance will amount to \$80-\$85 million based on a projection of 1967 figures. Because of the nature of the formulae, as dividends to policyholders are reduced, taxes are increased. If policyholder dividends are reduced to offset the investment tax alone, the above estimate is increased to \$105 million. To indicate the top of the range, if policyholder dividends are reduced to offset both taxes, the tax estimate would be increased to \$135 million.

Would you like any further explanation of that?

The Chairman: Yes, I think I would like some explanation of just how that works.

Mr. Schafer: Well, under the tax formulae the dividends to policyholders are deducted from your company's taxable income. Therefore, if you pay more dividends you pay less tax. But, conversely, if in order to pay tax you have to reduce your dividends, your taxable income is thereby increased, and your tax is increased. You have to almost cut off \$2 million of dividends in order to pay \$1 million of tax.

The Chairman: If the rate of taxation is 50 or 52 per cent, you can reduce that by paying more in dividends?

Mr. Schafer: That is right, if you have the money to pay. But, if you need the money to pay the tax then you have to cut the dividends, and, consequently, your tax goes up. So, it is rather a vicious circle once you get into it.

The Chairman: But in those circumstances your investment income and the 15 per cent rate might come down?

Mr. Schafer: Yes, sir. The burden of these taxes will fall on our millions of policyholders and will substantially increase the cost of life insurance to them.

Obviously, the sudden impact of taxes of this magnitude on our policyholders could dislocate our field organization and cause other serious marketing problems, which, as we have stated, would significantly reduce the formation of new capital from life insurance savings for financing governments, municipalities, corporations and housing. We believe that this reduction will be much greater than the amount of the taxes.

Canadian life insurance companies doing business in the United States estimate that the burden of the new taxes will be greater than the burden of corresponding life insurance taxation there.

Mr. Lemmon: Perhaps I might make a comment here. There has been considerable discussion of this statement in the press, and indeed in discussions between ourselves and officials of the Department of Finance. Our own company, Canada Life Assurance Company, estimates that the tax that will accrue to our Canadian operations on the basis of the bill as passed in the house, plus the draft regulations which have been tabled would be roughly two and a half times the tax that our United States branch will pay this year, and our Canadian business is something under twice the size of the American branch. To put that another way, relating our United States branch to our Canadian branch, the size is in the ratio of one to two. The tax will be in the ratio of one to two-and-a-half. That is, on the basis of the actual operations of our United States branch and our Canadian branch the tax as proposed is a heavier burden related to income, related to assets, or related to other measures of the relative size of the two operations.

The Chairman: What would be the percentage, if you can express it, of premium income to the total income of life insurance business? Take any mature company.

Mr. Lemmon: I do not know whether anybody can quote it for the industry as a whole. I can quote the figure for our own company. Our total investment income would be roughly six per cent on \$1,200 million, something of the order of \$70 million. Our total income from all sources is something of the order of \$250 million.

The Chairman: How much would be the premium income?

Mr. Lemmon: The premium income would be the balance of that, \$180 million.

The Chairman: Because you include rentals and everything in the investments.

Mr. Lemmon: Investment income includes returns from all sorts of investments.

Senator Beaubien: Before this bill is passed the tax in the United States is higher than here?

Mr. Lemmon: The only tax we paid in Canada prior to this bill was a premium tax, two per cent of the premiums collected in this country.

Senator Beaubien: In England it is higher also.

Mr. Lemmon: In England there was no premium tax. The tax on the companies is heavier premiums but also policyholders themselves are getting tax relief.

Senator Isnor: You say you are using your branch.

Does the same thing apply to an American insurance company?

Mr. Lemmon: Perhaps Metropolitan would answer that.

Mr. G. R. Berry, Vice-President and General Manager, Metropolitan Life Insurance Company: I am not sure that I understood the question.

Senator Isnor: Mr. Lemmon used the term "our branch" in the United States, and he used it on two or three occasions. I wanted to know if the same argument could be applied in connection with an American company here.

Senator Connolly (Ottawa West): As a branch in Canada.

Senator Isnor: First of all in the United States, comparing our tax with United States tax.

Mr. G. C. Campbell, Vice-President, Staff Services – Taxation, Metropolitan Life Insurance Company: In our business we find that the tax would probably be a little less under the Canadian formula in Canada than under the U.S. formula, but that should not be regarded as typical for Canadian companies, for two reasons. First, we have a substantial volume of debit business, where we collect premiums in the homes of the policyholders, which increases our expense deductions. The other reason is that Canadian companies have considerable non-par business, and we have no non-par business. The U.S. tax bears a little harder proportionately on participating business, while the Canadian tax is without bias, and for that reason I think the tax on Canadian companies would be a little higher. In our association calculations we tried to estimate the U.S. tax for the ten leading Canadian companies and the Canadian tax on the new basis. On the Canadian tax basis, with dividends reduced enough to maintain the surplus additions that had been made, for nine out of ten companies the Canadian tax was heavier than the U.S. tax. The one Canadian company that was not heavier also had a lot of debit business of the same kind that our company has.

The Chairman: Are there any other questions on this point?

Senator Isnor: I have not a question but a comment that I should like to make.

The Chairman: Go ahead.

Senator Isnor: Am I correct in saying you fear to make a comparison of a purely Canadian company with a purely Canadian company's branch in the United States?

Mr. D. E. Kilgour, President, Great West Life Assurance Company, Winnipeg: I wrote the minister in January that our operations are very close to fifty-fifty; they are slightly larger in Canada than the United States—52 per cent to 48 per cent or thereabouts. Our 1967 tax calculated on our then understanding of the Canadian bill would be proportionately 60 per cent higher than our tax on our United States business. The bill has since been made more severe, so my guess is that our taxes on our Canadian business will be closer to 100 per cent more than the tax that falls on our United States business. We are operating in the two markets with the same product and this is the net effect. There is no question, it depends on the composition of the company's business. We probably do more non-par, more health than many companies and the tax on our company will be close to double as high in Canada as in the United States.

The Chairman: You mean the weight, or depending on your mix.

Mr. Kilgour: Depending on the mix, and also on the maturity of the business. There are a number of companies just in the development stage down in the United States that do not pay any tax at all because they are not in a profit position yet. We are relatively mature down there and our tax bill will be clearly much higher in Canada than in the United States.

Senator Isnor: You are still speaking of branch business in the United States?

Mr. Kilgour: Possibly they are not "branches" in the usual corporate sense. We sell identical products from Winnipeg in Chicago or Toronto. The only difference is that the former involves investments in United States funds and the other involves investments in Canadian funds. But, they are much in one pot as a manufacturer who turns out all of his goods in one plant and sells them in one market or the other. A different label may be used, but it is one product and one service that is sold.

Senator Benidickson: The rates are the same.

Mr. Kilgour: No, our rates are not the same. They have always been higher than in the United States and presumably will have to go higher in Canada.

The Chairman: Mr. Kilgour, when you talk about branch operations there seems to be a little confusion. Your company operates under the name of The Great West Life in Canada and the United States.

Mr. Kilgour: I think branch is a colloquialism. It is part of the industry jargon. Some of the Government statements require you to report on your "U.S. branch". It is a colloquial expression. We have to keep our accounts segregated for both countries, but I do

not think the word "branch" has any particular significance.

The Chairman: The expenses of all of your branches are allocated as though it were one operation?

Mr. Kilgour: Right, including our costs allocated over the whole system just exactly as one business.

The Chairman: Go ahead, Mr. Schafer.

Mr. Schafer: Contingency reserves and surpluses. A unique characteristic of life insurance is its long-term nature. Contracts often span half a century, through wars, recession, inflation and other contingencies. We have been disturbed at an apparent lack of recognition of the need for certain safety factors essential to such a business.

In the proposed tax measures there are no deductions—except in respect of group insurance—in the business income tax formula for contributions to surplus and contingency reserves. These are absolutely essential for the protection of policyholders. A life insurance company simply has no option but to hold adequate surplus and contingency reserves. Contributions made each year to build and retain these are just as much expenses inherent in the provision of guaranteed benefits as any other costs of doing business. It is therefore our contention that the regulations should provide for a deduction of not less than 5 per cent of the increase in policy reserves.

Senator Phillips (Rigaud): Mr. Chairman, I can follow the reasoning in respect to contingency reserves in the last sentence which is a sequitur to the providing of a 5 per cent increase in policy reserves, but I do not follow the reasoning with respect to contributions to surpluses being a reduction from income. Maybe there is a particular feature of life insurance companies with which I am not familiar.

Mr. K. R. MacGreagor, Immediate Past President, Canadian Life Insurance Association and President, Mutual Life Assurance Company of Canada, Waterloo: I should like to comment in regard to this point, because frankly I feel the strongest about it. We have not come here to whimper over paying taxes. The life insurance companies are quite prepared to pay their fair share of taxes. At the same time, we must say that we have been appalled by the burden of the proposed taxes and the suddenness with which they have been imposed. Somehow it seems to be assumed that the business will make some technical, mathematical adjustments and go on much as before except that we shall pay taxes of the order of \$100 million a year. The shock of this burden is really unpredictable at this point. We do not know what effect or what effects these taxes are going to have on our business. We do know that they are going to have a very broad effect in many ways on our investment policy and on the

mixture of our business. Inevitably I feel there will be more term insurance sold and less permanent insurance with cash values and so on.

I think that perhaps one can bring the whole thing into a little better perspective by pausing to consider one's personal situation or the situation of another business in which he might be interested, regardless of the nature of the business. Think of a person, whether corporate or individual, not heretofore having been subjected to taxes of any significant amount suddenly being taxed at the full level presently prevailing. It is very easy to say, just readjust your way of life and go on substantially as before. There are very serious adjustments to be made and with quite inadequate time to make them.

I do feel that perhaps my background explains my concern, but life companies, like other financial institutions, can get into trouble and it is rather remarkable how adverse influences very frequently combine and happen at the same time, whether they are investment losses or a change in the incidence of mortality or unduly heavy expenses, et cetera. I can say from experience that in the past, when a life company has got into a thin position, it has been a very long and difficult course nursing it back to health.

Now, with this double-barreled tax formula it is going to be extremely difficult to nurse—I hate to use the word—a sick life company back to health, because a company that gets into that position inevitably has very meagre earnings and if all it will have available is what is left after paying the 52 per cent corporation tax it is going to be a very long and painful process to get it back to health. It will certainly be much longer and more painful than heretofore.

I am well aware of the reluctance of the tax authorities to recognize appropriations, Senator Phillips,—deductions, to use your word—from taxable income toward contingency reserves lest corporations tuck it away simply to avoid taxes. However, I do think there is a good case for some deduction of this kind or some appropriation for this purpose under the business income tax. I am not speaking of the investment income tax. It is justified by reason of the nature of our business and also by reason of the nature of the double-barreled formula that our companies are being subjected to. In most businesses one pays tax on the combined corporate earnings as a result of their operations. In the proposed system of taxation for life companies in Canada—we have two tax formulae, one on the business income of the corporation and one on the investment income. And in our case, the investment income will be taxed regardless of the overall results of the companies' business.

Senator Beaubien: It is not lumped together.

Mr. MacGregor: It is not lumped together. The two are interrelated but a company is subjected to the investment tax regardless of the profit ability of its operations as a whole.

Perhaps one can see the picture a little more clearly if you consider the fire and casualty business—the general insurance business—and think of their investment income separately from their so-called underwriting results, which of course is simply the result of deducting from the premium income their claims and expenses.

But Canadian general insurance companies of course pay tax on their net income, the net of their underwriting account and their investment account, like all other corporations.

I shudder to think of the position that our Canadian general insurance companies would be in, had they been subject over the years to the double barrelled formula of this kind, paying on their investment income—regardless of the fact that for a period of years they may have run heavily in the red on their underwriting account.

It is all very well to say that net losses may be carried forward for five years, but that is of no help if the company is not in business at the end of the five years. If it is not, there is no use in having unused tax losses at the end of the five years.

I must say that we have requested from the outset that a reasonable provision—or “deduction” perhaps sounds better to Senator Phillips—might be made from the business income tax proposed under this bill by way of an appropriation to general reserves or surplus.

We originally requested that 6 per cent of the increase in policy reserves might be permitted for this purpose. We have got down to 5 per cent.

The Chairman: I do not want to interrupt you, Mr. MacGregor, but I would like to understand very clearly this last sentence, which is right on the point you are talking about, that:

It is therefore our contention that the Regulations should provide for a deduction of not less than 5 per cent of the increase in policy reserves.

There must be some significance there in the use of the word “regulations”.

Mr. MacGregor: Whether the provision is in the bill or in the regulations is immaterial to us. We hoped it would be in the bill. It might still be put in the regulations.

The Chairman: It is more flexible in the regulations.

Senator Connolly (Ottawa West): It is important from the point of view of the Senate, because if we

come to a bill that involves taxes we are always faced, as you know, Mr. MacGregor, that if we start disturbing the tax table we are interfering with Ways and Means—Government is always telling us of this—but if this can be done by regulation, if we are convinced of that—I would like to hear as much as I can on that very point.

Mr. MacGregor: We have been hoping from the outset that the provision would be somewhere, whether in the bill or in the regulations is immaterial to us. It is not in the bill.

The Chairman: How do you know what it will be at this moment?

Mr. MacGregor: It is nothing at this moment, sir.

The Chairman: You are fearful?

Mr. MacGregor: The draft regulations were tabled on May 9.

The Chairman: What is contained there?

Senator Connolly (Ottawa West): Is there authority in the bill to make a regulation to deal with this?

Senator Walker: Would you be satisfied that that would be helpful to you—if it is not in the act, but in the regulations?

Mr. MacGregor: Yes. We think there is authority in the bill. I prefer to leave it to the tax officials. Mr. J. R. Brown nods, I think, in the affirmative, and I think there is concurrence on that score.

I feel strongly about this point. I feel that, down the line, companies are going to get into difficulty and I know that those who will be responsible for them will regret it if this problem is aggravated. As I mentioned earlier, I am well aware of the reluctance to recognize any deduction or appropriation of this kind towards anything that looks like a contingency reserve. I do feel our situation is different, and I feel it is different because of the double barrelled formula. In particular if the deduction is permitted under the business income tax and thus is not taxed at 52 per cent, it automatically falls under the investment income tax and is taxed at 15 per cent, which we feel is the more appropriate tax, since it is the assumed average policyholder rate of tax.

The Chairman: Mr. MacGregor, again for the purpose of understanding, I still have difficulty in understanding what this sentence means when it uses the word "deduction", that is, that the regulations shall provide for a deduction of not less than 5 per cent of the increase in policy reserves.

Mr. Schafer: Deduction from taxable income.

Mr. MacGregor: The increase in policy reserves from the beginning up to the end of the year. The normal increase itself is allowed in essence as a business expense, but we are asking really for an extra 5 per cent.

The Chairman: For larger policy reserves?

Mr. MacGregor: For a provision whereby we may not only deduct the full increase in the policy reserve, but 5 per cent over and above the increase—that is, 105 per cent of the increase in policy reserves during the year.

The Chairman: How would you justify that?

Mr. MacGregor: As a means of enabling companies to maintain a reasonable surplus position, particularly in the times that we face, because of the severity of this tax.

The Chairman: You will be seeking the difference between 15 per cent and 52 per cent?

Mr. MacGregor: Yes, that is right.

Senator Connolly (Ottawa West): There are some other words there.

Senator Molson: This is in the nature of a contingency reserve—one figure, the actuarial figure, policy reserve. You are suggesting that, the times being unpredictable and uncertain, there should be some contingency on this figure. Is that correct?

Mr. MacGregor: That is correct.

Senator Burchill: Did you base that 6 per cent on anything?

Mr. MacGregor: The 6 per cent is the minimum surplus position that companies like to maintain in order to hold their heads up in the life insurance business. It is also the minimum surplus—and when I use the term "surplus" I mean surplus or general reserves or contingency reserves that are not earmarked for special purposes and therefore are essentially surplus—in the insurance act—in the legislation passed in 1957 to permit companies to mutualize. Six per cent is the minimum surplus that companies have to maintain before they embark on buying their own shares. I must say that I think in general it is unsafe for companies to maintain surplus at a lower level.

Any deduction of this kind would simply defer the incidence of the business income tax, but in the meantime it would be subject to a levy of 15 per cent under the investment tax. It would come back into

income, if business was not continually on the increase.

The Chairman: And at that point you would then be claiming a credit for it at 15 per cent.

Mr. Schafer: It would be automatic.

Mr. MacGregor: I am sorry, sir, I did not follow you.

The Chairman: I know there is provision in the bill under which you may deduct the investment tax of 15 per cent; but I was wondering if you did increase your policy reserves in this fashion and they are built up to a surplus of a larger amount. But then you were paying 15 per cent on the investment income by reason of that, if that situation persisted for a couple of years and then reversed itself, is there any provision by which, in the year of reversal, you can get back by way of refund the 15 per cent, or get a credit for it?

Mr. Schafer: I do not think so.

Mr. MacGregor: As far as actuarial reserves are concerned, they will be controlled for tax purposes. They are controlled by the regulations which are now all set up. We might increase reserves for statement purposes, but not for tax purposes. No, that would be controlled by the regulations.

Senator Connolly (Ottawa West): There are some words in this paragraph that may be significant and perhaps Mr. MacGregor would like to say a word or two about them. I wish he would, for my enlightenment. It says:

... these are just as much expenses inherent in the provision of guaranteed benefits as any other costs of doing business.

Mr. MacGregor: We believe that the increase in policy reserves, the amount that we appropriate each year, to build up our policy reserves, is a legitimate cost of doing business.

We believe that is a legitimate cost of doing business. We collect the premiums; we pay our claims and we pay our expenses and we must, in order to meet future claims, put, broadly speaking, most of the rest into policy reserves and surplus to build them up. We feel that a company could not safely continue to conduct its business without surplus and adequate reserves. One cannot just maintain its policy reserves and have no surplus or contingency reserves. A person would be unwise to insure with such a company.

Senator Connolly (Ottawa West): In other words, the more you do this kind of thing the more security you provide for the policyholder.

Mr. MacGregor: Yes and we have a heavy responsibility to our policyholders. I have nothing more to say, Mr. Chairman, but I feel so strongly about this point that, regardless of what the outcome may be, I should like to record my concern at the absence of any provision for this purpose. I feel it is an unfortunate omission and I am convinced that down the road ahead problems will be aggravated as a result of the omission and it will be regretted.

Senator Connolly (Ottawa West): If a regulation were made in the manner you suggest, would it affect what you describe as the weight of the tax?

Mr. MacGregor: It would lighten the weight some, yes. If 6 per cent, as we originally requested, were granted, it would reduce the tax burden. This is before any adjustment of dividends to meet the tax. It would do so by perhaps 10 or 12 per cent, if the deduction were 6 per cent. Every 1 per cent of the 6 per cent would probably amount to about \$2 million.

Senator Isnor: Every 1 per cent?

Mr. MacGregor: Every 1 per cent allowed for this purpose would probably reduce the over-all tax by approximately \$2 million out of the \$85 million. These figures are before any adjustment for dividends is made to help meet the taxes.

Senator Beaubien: The tax now would be \$100 million. Therefore, if 6 per cent was now set aside that would make a difference of \$12 million.

Mr. MacGregor: If I might just add this, Mr. Chairman, when I say I think we have a strong case, notwithstanding the known reluctance to recognize appropriations to contingency reserves, I don't know of any other business that is subjected to a double-barrelled tax of this kind whereby we must pay tax on our investment income regardless of the over-all results of our operations. I don't know any other business subject to such a tax. I think that differential alone provides some justification for an appropriation for this purpose.

Senator Burchill: There is nothing like it in the United States, I suppose?

Mr. Kilgour: In the United States, under the income tax laws, you do not pay tax on the amount that goes into contingency reserves and surplus, so long as you keep it there. If you ever draw upon it, then you do pay tax. Is that substantially correct, Mr. Harland?

Mr. H. E. Harland, Actuary, Great West Life Assurance Company: There are two specific provisions in the United States tax laws for pre-tax contingency reserves. One is the provision for build-up of reserve in respect of group insurance business and health in-

insurance business equal to 2 per cent of premiums with a maximum of 50 per cent of premiums in that year and the total amount accumulated in all past years. That is similar to a provision that is in draft regulations for us in our law here.

Another provision in the United States law for which we see no counterpart here is in respect of the build-up of contingency reserves amounting to 10 per cent of the increase in non-participating insurance reserves.

Senator Carter: Mr. Chairman, I want to be clear on one point. We have heard the term "mix" used here several times. Are we talking only of different types of life insurance or is there any reference here to other types of insurance?

Mr. Schafer: We are talking about different types of life insurance only, senator. We are not referring to automobile insurance or anything like that.

Senator Carter: Thank you.

Mr. A. M. Campbell, President, Sun Life Assurance Company of Canada: Mr. Chairman, Mr. MacGregor has referred to the necessity for surplus and contingency reserves. We need this for protection against investment and mortality losses, just as Mr. MacGregor suggested, but there is another important aspect of the need for surplus and contingency reserves. By and large we are obliged to produce our annual statements on a market value basis with the exception of Government bonds which are amortizable. I need not point out to the honourable senators that the bond market has seriously declined over the last number of years. If the companies had not had the surplus funds, I think Mr. MacGregor's predictions would have come to pass already. So, if we don't have the right in the future to build up a contingency reserve base of some nature at a reduced tax rate, as we recommend, I think we are heading for a lot of trouble.

Mr. Harland: Mr. Chairman, if I may add to what I said previously, there is one other specific way in which the United States law makes provision for pre-tax build-up. Any surplus earnings under the U.S. law come under what is popularly called the phase two tax; the tax there is only half of the regular corporate rate, and the legislative record in the United States clearly shows that the reason for this half rate of tax—which is all that applies until such time as this surplus is actually distributed—is clearly because of the uncertainty of the emergence of profits in the life insurance business and the long-term contingency and uncertainties in that business. That half rate on the emergence of surplus is of course a very important concession.

Another point I should like to make is that the experience under the United States law provides a very

demonstrative argument in favour of the statement at the top of page 6 in this brief that the build-up of surplus and contingency reserves is an inherent expense in the guaranteed benefits. I say that because the United States tax law that was introduced in 1958 brought in a much heavier base of taxation in the United States and one that depended very largely on the interest earned on surpluses held by insurance companies. The U.S. tax law is very sensitive to the levels held by the various companies and, therefore, the companies obviously could reduce their tax by reducing their surpluses.

Beginning January 1, 1958, companies operating in the United States had a new and strong incentive to reduce their surpluses, and their taxes, if they felt that that would make operating sense to them. In fact, the experience of the industry shows that surplus levels have increased since that time and we think that is a strong demonstration that the industry really and truly believes those surplus amounts are a required part of doing the business. That is why we say they are an inherent expense of the business.

Senator Beaubien: Can anyone here give us an idea of the book loss of the 109 life insurance companies represented here, in respect of Dominion of Canada bonds alone?

Mr. A. M. Campbell: I understand that there are no over-all figures, but, speaking for our company, I can give you rough figures for all bonds. In my own company the drop has been in the region of \$200 million. That is just in one company. That is the sort of figure we are talking about.

Mr. Kilgour: If we had not built up a substantial surplus for contingencies in the past few years there would not be half a dozen companies in Canada presenting solvent balance sheets.

Mr. Schafer: Mr. Chairman, may I correct an impression which I may have left which was slightly incorrect. You asked me if this was the first chance we have had to discuss the bill, and I said not in a parliamentary committee but we had discussed it with the Minister of Finance on several occasions. I did not tell you that this afternoon at 4.30 we had an opportunity to speak with the Prime Minister. I wish to make that clear now. Of course this was actually after the bill had passed the house.

The Chairman: Was this the first opportunity you had?

Mr. Schafer: We had asked for the opportunity earlier, but he was unable to see us until this afternoon. However, this afternoon we had fifty minutes with the P.M.

The Chairman: That was the post-mortem.

Mr. Schafer: The next item then deals with certain inequities as we see them. The Minister of Finance has stated his objective is to treat life insurance companies equitably in comparison with other financial institutions or amongst themselves. Some of the tax rules applied to our business fall considerably short of this objective. Here are some examples of situations in which equity is not attained. Some of these get slightly technical, but we thought they should be put in the record so that you would have them in front of you.

(a) The first one is that in the investment income tax there is a 50 per cent deduction of administrative expenses. The 50 per cent figure is supposed to reflect the proportion of expenses relating to the savings element in life insurance contracts. It was admittedly "pulled out of the air". We believe it is significantly low. Also, a flat figure does not reflect the differing mix of savings and insurance elements in the business of individual companies and favours those companies where the savings element is relatively less important. I might say that on this we did some investigations which indicated a figure of 85 per cent might be close to the true figure, but the figure appearing in the bill is 50 per cent.

(b) There is a form of group life insurance business with a savings element in it. It therefore generates investment income which is taxable under the investment income tax. However, none of the expense of this form of business is deductible. This is obviously inconsistent. We call this business "group permanent" and some companies are now writing some of this type of business.

(c) The existing tax of 2 per cent, imposed by the provinces, on life insurance premiums does not apply to services provided by other financial intermediaries. A premium tax credit against the investment income tax has been allowed but only on a 50 per cent basis. This relief is insufficient to achieve equity with other financial institutions, and it is our contention that a larger tax credit is justified. This is actually the same type of situation as you have with regard to expenses under the investment income tax. The 50 per cent figure is two low.

(d) Under Section 28 of the Income Tax Act, dividends received by a taxable corporation from other Canadian taxable corporations are free of tax. Bill C-191 excludes life insurance companies from this treatment. No other intermediaries have to pro-rate corporate dividends between capital and customers' accounts as Bill C-191 requires for life companies' guaranteed business. This makes it impossible for life companies to derive the same return on a given Canadian stock investment as a trust company or a bank, for example. It seems to us unfair to put the life

companies and their policyholders at this disadvantage.

The Chairman: It has been said that the formula provided in the bill is intended or designed to give to you the equivalent of this 20 per cent deduction. Have you any comment on that?

Mr. Schafer: Well, our point is that the deduction for corporate dividends we are allowed is not as high as the deduction allowed to banks and trust companies.

Mr. Kilgour: Every other corporation gets dividends tax free.

The Chairman: But according to what I have read there is that 20 per cent deduction on dividends to individuals.

Senator Walker: That does not help the company.

The Chairman: Are life companies not specifically excluded from any free tax receipt of Canadian dividends they might get from Canadian companies?

Mr. Kilgour: Which we think is rather embarrassing and discriminatory.

The Chairman: I am not disputing that, but the formula in the bill is designed to provide an equivalent amount by separating what goes into profits and what goes to customers accounts.

Senator Walker: Where does it indicate that? You have read it, but we have not heard anything to-night to indicate it.

Mr. Lemmon: I think the reference to the formula is substantially true, but the chartered banks do not have to separate their common stock dividends between the portion that goes to depositors and the portion going to capital, and trust companies do not have to split theirs. What you say about the treatment is substantially true, but it is different from the treatment accorded to other financial institutions.

Mr. A. M. Campbell: This came as a very great shock to us when we learned the fact for the first time in the tax act. In the budget this was not referred to at all, and it was clearly stated that the general provisions of the Income Tax Act would apply to life insurance companies as it did to other corporations. This was an additional tax that was added after our main discussions with the Minister of Finance and the officials of that department.

The Chairman: It was additional tax in the sense that it was exposing more income to tax.

Mr. A. M. Campbell: We feel it is most discriminatory to have the insurance industry the only one singled out in this particular way.

The Chairman: Have you raised that point in any of your discussions and have you received any answer?

Mr. A. M. Campbell: We have raised it in discussions and the only answer we received was "well, possibly other people are getting away with something." But now the June budget has been brought down and apparently people are still getting away with it.

Senator Connolly (Ottawa West): I take it this anomaly or inconsistency you talk about cannot be cured by regulation since it is a provision of the act.

Mr. Schafer: (e) The new taxes apply only to the Canadian business of the companies. However, a small part of investments relating to Canadian business—one or two per cent—is made abroad. Foreign taxes are withheld on these investments but no credit is being accorded the Canadian life companies for such foreign taxes. This seems very unfair.

(f) Now, I would like to refer to an inequity that could have an unfair and severe impact on some of the medium and smaller life companies particularly. For the purpose of a starting value for capital cost allowance on real estate a capital improvement is defined as an improvement or addition in excess of \$100,000 (page 64, line 8). This is a very high threshold for an improvement or addition in relation to the actual cost of some head offices as shown in company annual statements. Then we list there a representative sample of some medium and smaller companies and, obviously, an improvement to one of these buildings might well cost less than \$100,000 and, therefore, would not receive any allowance.

The Chairman: Did you get any explanation as to where this figure came from?

Mr. Belzile: I represent one of the companies listed. Our home building was built in 1937, and the biggest improvement we have put on the building since that time has not been more than \$50,000, and it seems to us that for a smaller company this \$100,000 is really too high, because we certainly have made capital improvements of significance on the building.

The Chairman: If you do not have at least \$100,000, it means the building, with the addition, is treated as all having the same life, for depreciation purposes, so you come up to the starting point of January 1, 1969 with a lower depreciable capital cost.

Mr. Belzile: Yes, with a lower capital value on the books at January 1, 1969.

The Chairman: Do you suggest that the \$100,000 should be taken out and that you should have to establish . . .

Mr. Belzile: I would recommend \$50,000.

Mr. Schafer: We have a suggestion here.

We believe the threshold should be expressed as the lesser of \$100,000 and, say, 10 per cent of a building's actual cost as reported in the 1968 statement to the relevant authority. That would still wash out small amounts but give a great deal of relief to a smaller company.

The Chairman: If you had a building that was put up 20 years ago and you had a \$100,000 addition put up four years ago, you would have to depreciate the addition over the whole period of 20 years. You would have to take depreciation on the building at 20 times 2½, and that would be deducted from your total cost, so your starting point of capital cost allowances under the new bill, in January, 1969, would be that lower amount. In other words, the addition four years ago of \$100,000 would be deemed to have had the life of the original building. That is pretty tough.

Mr. Schafer: (g) For the policy dividend limitation under the business income tax, so-called "experience rated non-participating" group term life insurance is treated differently than so-called "participating" group term business (page 27, line 29). In practice, so far as the group policyholder and group consultant are concerned, there is no difference. Group contracts called "participating" by some life insurers are little different in effect from those called "experience rated non-participating" by others. The inconsistent treatment apparently arose from a view on the part of some government officials that an experience refund reflects the experience solely of a particular group and that the experience of other groups insured by a given company is taken into account in determining policy dividends but not experience refunds. There is no distinction on this ground between an experience refund or policy dividend. Failure to treat all group term insurance alike will result in inconsistent bases among the companies for calculating the limitation on policy dividends.

That is rather a technical situation, and I do not think we want to go too far into it here.

(h) There is a restriction on the losses on the sale of bonds held at the end of 1968 which the life companies can offset against taxable income (page 65, line 18). The 10-year duration of this provision is arbitrary and restrictive. We feel it is inappropriately long and that five years would serve the purpose of this provision.

Mr. Kilgour: There is no such restriction in the United States, if you take a loss on the sale of bonds.

Mr. Schafer: Our final paragraph: All the intricacies of the new life insurance tax system are not yet apparent. Your proceedings will be most helpful in this regard. We hope we are not being unreasonable in suggesting that some adjustments be made at this time in the new taxes to fulfill the promise of fair treatment among financial institutions. We are also hopeful that the authorities will recognize the vital need for adequate provision for contingency reserves and surplus to carry out the long-term commitments unique to life insurance.

Mr. MacGregor: Mr. Chairman, regarding that last sentence, might I correct a figure I gave when speaking earlier about weight of tax and the desirability of an appropriation or deduction for contingency reserves?

I guessed the 6 per cent provision we had originally requested might have the effect of reducing the total tax taken by about \$12 million, or \$2 million for every 1 per cent. I think the figure would much more likely be \$1½ million for each 1 per cent, or \$9 million for 6 per cent, \$7½ million for 5 per cent, and so on.

The Chairman: Do you gentlemen have anything to add? We have had your formal statement and a cross-fire of questions. Is there anything more you want to add?

Are there any more questions the senators would like to ask?

Senator Phillips (Rigaud): In addition to the possibility of dealing with the contingency reserves, have the companies received any legal advice or do they themselves know whether any further relief can be granted by regulation, other than the subject of contingency reserves, at this stage?

Mr. MacGregor: One of the provisions we have been looking at, Senator Phillips, is on page 17 of the bill as passed by the House of Commons. Perhaps I might read the whole of subsection (3):

In computing a life insurer's income for a taxation year from carrying on its life insurance business in Canada, there may be deducted

(a) such of the following amounts as are applicable:

(i) such amount in respect of a policy reserve for the year for life insurance policies of a particular class as is allowed by regulation,

The Chairman: And the next, (ii)?

Mr. MacGregor: That has been implemented in the regulations, contingency reserves in respect of group life insurance policies.

Senator Connolly (Ottawa West): In other words, the item you discussed earlier, Mr. MacGregor, you say can be cured by regulation pursuant to subsection (3) (a) (i), specifically?

Mr. MacGregor: Yes. We think it would have been more satisfactory had it been provided right in the bill, as the contingency reserve for group life is provided in (ii), but we still think it could be provided by regulation.

Mr. Tuck: I take it Senator Phillips is wondering whether any of these others we have mentioned—(a), (b), (c), (d), and so on—can be dealt with by regulation. I am afraid the answer in respect of some of them is no.

The Chairman: Would you care to check off the ones where the answer might be other than "No" from your point of view?

Mr. Tuck: I think under (a)—that is, the 50 per cent deduction for administrative expenses—it seemed to us that a change in this would have to be in the bill. I think that is true of (b) and (c) and (d). I am afraid it is true of (e). It is true of (f) and (g).

The Chairman: It looks as though we have not drawn out any except the one.

Mr. Schafer: Yes, the contingency reserve.

Mr. Kilgour: If you have a minute, Mr. Chairman, I would like to make a comment that has not really been made, and one which I think is highly pertinent. In many ways this bill is tragic consequence of our political system.

Senator Isnor: What is that, again?

Mr. Kilgour: This bill is a tragic consequence of our political system. The Carter Report a couple of years ago came out with recommendations in respect to the taxing of life insurance companies and many of them were extremely devious, complicated, and complex, and almost hopeless of application. At that time our industry presented a brief to the then minister of finance in which we did not dispute that changes in taxation were inevitably going to occur, and we underlined to him the great complexity of the Carter proposals and the necessity for very prudent and wise decisions affecting an industry that was the backbone of the permanent financial structure of the country, because we do supply the majority of long term capital in Canada.

Therefore, we asked that the development of a bill to tax life insurance companies be a thoughtful process, and one in which our industry, committees of the House of Commons and committees of the Senate,

would have full opportunity of debating the economic wisdom, the equity, and the prudence of the mode of taxation to be adopted. We were assured that this would be the case.

In the United States, when their tax bill was adopted some years ago, it took them 2½ years to develop a bill that they felt was reasonably satisfactory. This does have such an enormous impact on the total economy, let alone the eleven million policyholders who have money in this business.

We again saw the new minister immediately after the election last year and made the same plea, offering that we would cheerfully work at full speed with any group under any direction that he set up to develop this.

Unfortunately, life insurance taxation got included in the budget, and that means under the new rules that there was no house committee. It came to us as a bombshell without any preamble of discussion, and it had a very much greater impact than those who were concerned with it felt was really necessary in the circumstances in which we live. They were talking of \$95 million in the budget, when the total dividend disbursements of all the companies in Canada is about \$200 million. So, you are imposing a tax which if applied directly would cut the policyholders' dividends by roughly 40 or 50 per cent. You do not just cut anybody's dividends by 40 or 50 per cent and expect cheers.

In this economic climate, in our view, one has to weigh very carefully the impact of things like this on the solid people of this country, and their faith in life insurance, and their willingness to keep on saving through this vehicle.

We immediately had an assurance from the minister that we would have sessions with him, and we have had most courteous hearings. The members of the department have listened long and arduously to our representations, and have worked under the greatest of difficulty in trying to produce a bill. But, the fact is that the bill has had to be produced in a period of some six months, and it is worse than when we started our representations—which shows the quality of them. It was either that, or the financial needs of the country were so great that they outweighed entirely every other economic consideration.

So, we have a bill here that is virtually law, in respect of which there have been no public hearings at which any group of people have had a chance of expressing their views.

The Chairman: Mr. Kilgour, may I interrupt you? What would be the effect if you reduced your dividends to policyholders, and you reduced your premiums?

Mr. Kilgour: Well, reducing our dividends is one thing, but reducing our premiums would thin us even more . . .

The Chairman: It would thin you, but it would certainly thin the tax too, would it not?

Mr. Kilgour: It may result in a movement to non-par business. I am not an actuary. But, I think that cutting the premiums when we have got to pay higher taxation—well, we have been cutting premiums in the last ten years.

The Chairman: It is part of the income on which you pay the tax under this bill.

Mr. Kilgour: I promised to be brief. In our judgment—and I speak with great conviction—this bill is too heavy and too grim in its impact. We are being subjected to some very serious surgery. All we can hope for, to offset the fact that this industry is being taxed very heavily, is some liberality in the regulations. Hopefully, the Senate would, somehow or other, urge the Government to re-examine this thing awfully quickly, because it may have a very serious impact on the stability and the pattern of investment in this country if some highly intelligent things are not done. We have tried to say nothing that would alarm the public, but I think we all share a deep concern that this bill in its present form is a very great financial hazard. I used the word "tragedy" a few moments ago, and it is my own word. I think it is a tragedy of our political system that we can do something this important without there being public discussion and public appraisal of whether it is the right course.

The Chairman: If there are no other questions at this time, I think we can adjourn until . . .

Senator Carter: The representative of the Sun Life mentioned a \$200 million loss in their bond holdings.

The Chairman: Yes, a loss of value.

Senator Carter: I was wondering if we could get a similar figure from some of the other larger companies.

Mr. A. M. Campbell: I do not think there would be much difference in percentage between all of the companies on that.

Mr. Lemmon: Speaking for our company, the shortfall in values would be in the order of \$50 million.

Mr. Kilgour: We would be of the same order. If it were not for the fact that we have a substantial contingency reserve and surplus, we would be in deep trouble.

Mr. A. M. Campbell: If we had not in the past built a surplus in the contingency reserve, as we are now more or less prohibited from doing except at great cost to the company in tax, we would have been in deep water.

Senator Phillips (Rigaud): Maybe the thing to do is to try by regulation to have a provision for a federal Government bond that can be applied at par in payment of taxes.

Senator Beaubien: For everybody!

The Chairman: Gentlemen, we will adjourn now. We are sitting tomorrow morning at 9.30.

Senator Benidickson: What are we doing on this bill in the future? If we are to have the minister here I wondered whether he would have any comments on the evidence we have had tonight.

The Chairman: We will not have his comments tonight. The committee resumes at 9.30 in the morning. The first order of business is still the Investment Companies Act, which will take an hour or an hour and a half. Then we have three other bills as well as this one. We may decide to clean the others out and do some thinking on what we have heard, and deal with the Income Tax bill when we sit next, which will be the following Wednesday.

Senator Walker: With great respect, the insurance companies have been treated in a shocking way. Is there nothing more we can get from them by way of suggestions on how we can amend the regulations to help them? Are you satisfied everything has been said?

The Chairman: Senator Walker, I am only another senator, although I am the chairman. I have listened very carefully to what has been said tonight and I may have gathered certain ideas.

Senator Walker: Can we come up with something tomorrow?

The Chairman: I think we should do some solid thinking on it. First of all we should hear the departmental officers and find out what they have to say about these matters.

Senator Walker: They are certainly not going to help us relieve the insurance companies, that is for sure. They are all working for Mr. Benson at the moment. I know; I was a Cabinet minister long enough, and vice-chairman of the Treasury Board, to know how they go about things.

The Chairman: Maybe when we are conferring you will be able to help deal with them.

Senator Walker: I wish I could. That is why I would like to see if there is any more advice we can get from the insurance companies.

The Chairman: I can assure you that any information we think we need we shall not hesitate to ask for, and Mr. Tuck knows that. As a matter of fact, I have already asked him for something.

Mr. Schafer: Thank you, sir.

The committee adjourned.



First Session—Twenty-eighth Parliament
1968-69

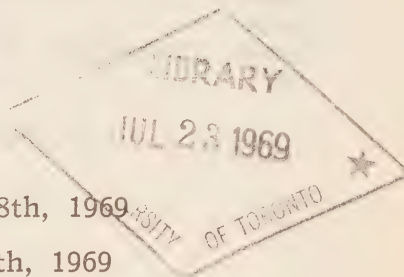
THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE
ON
BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 45

WEDNESDAY, JUNE 18th, 1969

THURSDAY, JUNE 19th, 1969



Seventh and Final Proceedings on Bill S-17,

intituled:

"An Act respecting Investment Companies".

WITNESSES:

Department of Insurance: R. Humphrys, Superintendent; P. Treuil,
Planning and Research Officer.

REPORT OF THE COMMITTEE

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Leonard
Aseltine	Desruisseaux	Macnaughton
Beaubien	Gelinas	Molson
Benidickson	Giguère	Phillips (<i>Rigaud</i>)
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Isnor	Welch
Connolly (<i>Ottawa West</i>)	Kinley	White
Cook	Lang	Willis—(30)

Ex officio members: Flynn and Martin

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, January 22nd, 1969:

"Pursuant to Order, the Senate resumed the debate on the motion of the Honourable Senator Desruisseaux, seconded by the Honourable Senator Sparrow, for second reading of the Bill S-17, intituled: "An Act respecting Investment Companies".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Desruisseaux moved, seconded by the Honourable Senator Sparrow, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative".

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, June 18, 1969.

(49)

At 10:30 a.m. the Standing Committee on Banking, Trade and Commerce resumed further consideration of:

Bill S-17, "An Act respecting Investment Companies".

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Benidickson, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Flynn, Gelinas, Hollett, Isnor, Kinley, Leonard, Macnaughton, Martin, Molson, Phillips (*Rigaud*), Thorvaldson, Walker and Welch.—(22)

Present, but not of the Committee: The Honourable Senators Everett, Hastings, McLean and Sparrow.—(4)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel; James K. Hugessen, Special Counsel.

The following witnesses were heard:

Department of Insurance:

R. Humphrys, Superintendent.

P. Treuil, Planning and Research Officer.

At 1:00 p.m. the Committee adjourned.

THURSDAY, June 19, 1969.

(50)

At 9:30 a.m. the Committee resumed consideration of Bill S-17.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien, Burchill, Carter, Connolly (*Ottawa West*), Flynn, Gelinas, Hollett, Isnor, Kinley, Leonard, Molson, Phillips (*Rigaud*), Thorvaldson, Walker, Welch, White and Willis.—(19).

Present, but not of the Committee: The Honourable Senators Irvine and Methot.—(2).

In Attendance: James K. Hugessen, Special Counsel. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The following witnesses were heard:

Department of Insurance:

R. Humphrys, Superintendent.

P. Treuil, Planning and Research Officer.

RESOLVED: The said bill be reported as amended.

Note: (The full text of the amendments appears by reference to the Report of the Committee immediately following these Minutes).

At 11:15 a.m. the Committee proceeded to the next order of business.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

THURSDAY, June 19, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill S-17 intituled: "An Act respecting Investment Companies", has in obedience to the order of reference of January 22nd, 1969, examined the said Bill and now reports the same with the following amendments:

Strike out clauses 2 to 30, both inclusive, and substitute the following therefor:

"2. (1) In this Act,

(a) "annual statement" means the statement required by section 5 to be filed in the Department of Insurance by an investment company;

(b) "business of investment" with respect to a corporation means the borrowing of money by the corporation on the security of its bonds, debentures, notes or other evidences of indebtedness and the use of some or all of the proceeds of such borrowing for

(i) the making of loans whether secured or unsecured, or

(ii) the purchase of

(A) bonds, debentures, notes or other evidences of indebtedness of individuals or corporations,

(B) shares of corporations,

(C) bonds, debentures, notes or other evidences of indebtedness of or guaranteed by a government or a municipality,

(D) real property other than real property that is necessary or convenient for the transaction of the business of the company, or

(E) instalment sales contracts;

or for the purpose of replacing or retiring earlier borrowings some or all of the proceeds of which have been so used.

(c) "certificate of registry" means a certificate issued by the Minister pursuant to section 10;

(d) "company" means a corporation incorporated by or pursuant to an Act of the Parliament of Canada;

(e) "equity share" means a share of any class of shares of a corporation to which are attached voting rights exercisable under all circumstances and a share of any class of shares to which are attached voting rights by reason of the occurrence of any contingency that has occurred and is continuing;

(f) "inspector" means an inspector appointed or designated in accordance with section 22;

(g) "investment company" means a company

(i) incorporated after the coming into force of this Act primarily for the purpose of carrying on the business of investment, or

(ii) that carries on the business of investment,

but does not include a company to which the *Bank Act*, the *Quebec Savings Banks Act*, the *Canadian and British Insurance Companies Act*, the *Trust Companies Act*, the *Loan Companies Act* or the *Co-operative Credit Associations Act* applies;

(h) "Minister" means such member of the Queen's Privy Council for Canada as is designated by the Governor in Council to act as the Minister for the purposes of this Act;

(i) "registered company" means a company that holds a valid and subsisting certificate of registry; and

(j) "Superintendent" means the Superintendent of Insurance.

(2) Where a company has borrowed money on the security of its bonds, debentures, notes or other evidences of indebtedness and has subsequently made loans or purchases as described in subparagraphs (i) and (ii) of paragraph (b) of subsection (1) it shall be presumed, unless the Minister is satisfied to the contrary, to have used the proceeds of such borrowing for such purposes.

(3) Notwithstanding the provisions of subparagraph (ii) of paragraph (g) of subsection (1) of this section the following companies shall be deemed not to be investment companies for the purposes of this Act:

(a) A company not more than forty percent of whose assets, valued in accordance with the regulations, are at any time during its current or last completed fiscal year used as described in subparagraphs (i) and (ii) of paragraph (b) of subsection (1);

(b) a company, the outstanding debt of which, including debts of any person the payment of which is guaranteed by the company, does not at any time during its current or last completed fiscal year exceed twenty-five percent of the aggregate of such outstanding debt and the paid-up capital and the surplus of the company determined in accordance with the regulations;

(c) A company that is engaged solely in the business of underwriter or of broker or dealer in securities and is licensed as such by a public authority of any province;

(d) A company that was not at any time during its current or last completed fiscal year indebted in respect of money borrowed by it to a person or persons other than persons who were at that time:

(i) companies to which the *Bank Act* applies; or

(ii) substantial shareholders of the company within the meaning of paragraph (b) of subsection 3 of section 8 hereof;

(e) A company to which Part II of the *Canada Corporations Act* applies or that is referred to in section 147A of that Act.

(4) For the purposes of this Act, a corporation is a subsidiary of another corporation only if,

(a) it is controlled by

(i) that other, or

(ii) that other and one or more corporations each of which is controlled by that other; or

(iii) two or more corporations each of which is controlled by that other; or

(b) it is a subsidiary of a subsidiary or that other corporation.

(5) For the purposes of paragraph (a) of subsection (3) any assets of a company which consist of loans to or shares, bonds, debentures, notes or other evidences of indebtedness of any subsidiary of such company shall be deemed not to be assets used as described in subparagraphs (i) and (ii) of paragraph (b) of subsection (1) provided that

(a) at least seventy-five percent of the equity shares of such subsidiary are owned by the company, and

(b) not more than forty percent of the assets of such subsidiary, valued in accordance with the regulations, are used as described in subparagraphs (i) and (ii) of paragraph (b) of subsection (1).

GENERAL

3. (1) Subject to subsection (2), this Act applies to all investment companies.

(2) The Minister may grant exemption from the application of this Act to any investment company if he is satisfied that

(a) the business of investment carried on by it is incidental to the principal business carried on by it, or

(b) the company is and intends to remain a company described in subsection (3) of section 2

but an exemption granted under this subsection may at any time be revoked by the Minister if he ceases to be so satisfied.

(3) Where exemption from the application of this Act is granted under subsection (2) to a company incorporated after the coming into force of this Act primarily for the purpose of carrying on the business of investment, such exemption shall not be revoked unless, in the opinion of the Minister, the company carries on the business of investment and is not a company described in subsection (3) of section 2; and where any exemption in respect of such a company is revoked, the company shall be deemed thereafter to be an investment company to which subsection (1) of section 11 does not apply.

(4) Where any conflict exists between any provision of this Act and any provision of the letters patent or any supplementary letters patent of an investment company, the provision of this Act prevails.

(5) Where any conflict exists between any provision of this Act and any provision of an Act incorporating an investment company or any amendment to such Act, unless that Act or amending Act by specific reference to this Act provides to the contrary, the provision of this Act prevails.

4. Letters patent issued under any Act of the Parliament of Canada to incorporate a company primarily for the purpose of carrying on the business of investment shall include the following words: "This company is incorporated as an investment company and is subject to the provisions of the Investment Companies Act unless exempted from the application of that Act in accordance with subsection (2) of section 3 thereof."

5. (1) Every investment company shall, within one hundred and twenty days after the end of each fiscal year of the company, file in the Department of Insurance

(a) a statement of the condition and affairs of the company at the end of its last completed fiscal year, in such form and containing such information as is prescribed by the Superintendent, or

(b) with the consent of the Superintendent, a copy of the financial statement, report of the auditor and any further information respecting the financial position of the company placed or to be placed before the annual meeting of shareholders following its last completed fiscal year.

(2) An annual statement filed in accordance with subsection (1) shall be verified by oath of two persons being, respectively, a director and officer of the company, both of whom are authorized by resolution of the board of directors of the company to verify the statement.

(3) The Superintendent may, by notice to an investment company, require it to submit to him forthwith statements of the condition and affairs of all its subsidiaries or of any of its subsidiaries named in the notice.

(4) The Superintendent may, by notice to an investment company, require it to include in the annual statement of its condition and affairs filed in accordance with subsection (1), the assets, liabilities, income and expenditure of all its subsidiaries or of any of its subsidiaries named in the notice and any such consolidated statement shall make due provision for any minority interest in the subsidiaries.

(5) The Superintendent may, by notice to an investment company, require it to submit to him forthwith a certified copy of its by-laws; and a company to which such notice has been given shall, within one month after any repeal or amendment of its by-laws or any of them or any addition thereto provide the Superintendent with a certified copy of such repeal, amendment or addition.

(6) The Superintendent may, by notice to an investment company, at any time require it to submit to him forthwith an interim statement of the condition and affairs of the company or of any of its subsidiaries as at the date mentioned in such notice, which statement shall be in such form and contain such information as is required by the Superintendent in such notice.

(7) The Superintendent may, by notice to any investment company or the president, manager or secretary of any such company require the company or person to whom the notice is given to provide him with such statements and information relating to the condition and affairs of the company, in addition to the information contained in the statement of the company filed in accordance with subsections (1) or (6), as may be specified in the notice and as he considers necessary to enable him to ascertain the financial condition of the company and its ability to meet its financial obligations; and any company or person to whom such a notice is sent shall, forthwith after receipt thereof, forward to the Superintendent a reply in writing setting forth such of the information and enclosing such of the statements, if any, specified in the notice as are available to or as may be reasonably obtained by it or him.

(8) The auditor of an investment company shall, at the time of his appointment, be:

- (a) an accountant who
 - (i) is a member in good standing of an institute or association of accountants incorporated by or under the authority of the legislature of a province;
 - (ii) is ordinarily resident in Canada; and
 - (iii) has practised his profession in Canada continuously during the six consecutive years immediately preceding his appointment; or
- (b) a firm of accountants of which one or more members is qualified in accordance with paragraph (a).

(9) The Minister, on the recommendation of the Superintendent may require that the auditor of an investment company shall report to him on the adequacy of the procedure adopted by the investment company for the safety of its creditors, and as to the sufficiency of his procedure in auditing the affairs of the investment company.

(10) The Minister, on the recommendation of the Superintendent may enlarge or extend the scope of an audit of the affairs of an investment company or direct any other or particular examination to be made or procedure to be established in any particular case as, in his opinion, the public interest may require and the investment company shall, in respect thereof, pay to the auditor such remuneration, in addition to any remuneration fixed in any other manner as the Minister allows.

(11) The Minister, on the recommendation of the Superintendent, may direct that a special audit of an investment company be made if in his opinion it is so required and may appoint for such purposes an auditor qualified pursuant to subsection (8) to conduct such audit and the expenses entailed therein are payable by the company on being approved by the Minister.

(12) It is the duty of the auditor of an investment company to report in writing to the chief executive officer and the directors of the company any transactions or conditions affecting the well-being of the company that in his opinion are not satisfactory and require rectification; and the auditor shall, at the time any report under this subsection is transmitted to the chief executive officer and the directors of the company, furnish a copy thereof to the Minister.

(13) Every investment company shall, prior to borrowing any money on the security of its bonds, debentures, notes or other evidences of indebtedness, file with the Superintendent in relation to such borrowing:

- (a) a prospectus which complies with the requirement of section 77 of the *Canada Corporations Act*; or
- (b) a copy of any prospectus or document of a similar nature required to be filed with any public authority under the law of any province.

6. (1) An inspector appointed or designated in accordance with section 22 may, at any reasonable time, enter any office of an investment company or of a company which is a subsidiary of an investment company and require the person appearing to be in charge thereof to produce for inspection, or for the purpose of obtaining copies thereof or extracts therefrom, any books, records or documents relating to the business, finances or other affairs of the investment company or any company that is a subsidiary thereof that are maintained or that could reasonably be expected to be maintained at that office.

(2) An inspector shall be furnished by the Superintendent with a certificate of appointment or designation and, on entering any office pursuant to subsection (1), he shall, if so required, produce the certificate to the person appearing to be in charge thereof.

(3) The person appearing to be in charge of any office described in subsection (1) and every person found therein shall give an inspector such assistance and furnish him with such information in support of the books, records and documents described in subsection (1) as the inspector may, for the purpose of carrying out his duties and functions under this Act, reasonably require him to give or furnish.

7. No person shall

(a) obstruct or hinder an inspector in the carrying out of his duties or functions under this Act; or

(b) knowingly make a false or misleading statement either orally or in writing to an inspector who is engaged in carrying out his duties or functions under this Act.

8. (1) No investment company shall knowingly make an investment

(a) by way of a loan to

(i) a director or officer of the company, or a spouse or child of such a director or officer, or

(ii) an individual, his spouse or any of his children under the age of twenty-one years if either the individual or a group consisting of the individual, his spouse and such children is a substantial shareholder of the company;

(b) in a corporation that is a substantial shareholder of the company; or

(c) in a corporation in which

(i) an individual mentioned in subparagraph (i) of paragraph (a),
(ii) an individual who is a substantial shareholder of the company,
(iii) any corporation that is a substantial shareholder of the company, or

(iv) a group consisting exclusively of individuals mentioned in subparagraph (i) of paragraph (a)

has a significant interest

(2) No investment company shall knowingly hold an investment made after the coming into force of this Act that, at the time it was made, was an investment described in subsection (1).

(3) For the purposes of this section,

(a) a person has a significant interest in a corporation, or a group of persons has a significant interest in a corporation if,

(i) in the case of a person, he owns beneficially, either directly or indirectly more than ten percent, or

(ii) in the case of a group of persons, they own beneficially, either individually or together and either directly or indirectly more than fifty percent,

of the capital stock of the corporation for the time being outstanding;

(b) a person is a substantial shareholder of a corporation, or a group of persons is a substantial shareholder of a corporation if that person or

group of persons owns beneficially, either individually or together and either directly or indirectly, equity shares to which are attached more than ten percent of the voting rights attached to all of the equity shares of the corporation for the time being outstanding; and in computing the percentage of voting rights attached to equity shares owned by an underwriter, there shall be excluded the voting rights attached to equity shares acquired by him as an underwriter during the course of distribution to the public by him of such shares;

(c) "investment" means

(i) an investment in a corporation by way of purchase of bonds, debentures, notes or other evidences of indebtedness thereof or shares thereof, or

(ii) a loan to a person or persons

but does not include an advance or loan, whether secured or unsecured, that is made by an investment company to a corporation and that is merely ancillary to the main business of the investment company; and

(d) "officer" means the president, vice-president, secretary, assistant secretary, comptroller, treasurer and assistant treasurer of a corporation and any other person designated as an officer of the corporation by by-law or by resolution of the directors thereof.

(4) Where any person or group of persons is a substantial shareholder of an investment company, and as a consequence thereof and of the application of this section, certain investments are prohibited for the investment company, the Minister may, by order, on application by the investment company, exempt from such prohibition any particular investment or investments of any particular class if he is satisfied that the decision of the investment company to make or hold any investment so exempted has not been and is not likely to be influenced in any significant way by that person or group and does not involve in any significant way the interests of that person or group, apart from their interests as a shareholder of the investment company.

(5) Any order of exemption made by the Minister under subsection (4) may contain any conditions or limitations considered by the Minister to be appropriate and may be revoked by the Minister at any time, but subsection (2) does not apply to any investment made by the investment company to which the order applied, that was made while the order was in effect and that was an investment to which the order applied.

(6) The Minister may, by order, on application by an investment company, exempt it from the application of subsection (2) in relation to an investment or investments described in the order and made by it at a time when it was not an investment company or when it was exempted from the application of this Act.

(7) For the purposes of this section, where a person or a group of persons owns beneficially, directly or indirectly, or pursuant to this subsection is deemed to own beneficially, equity shares of a corporation, that person or group of persons shall be deemed to own beneficially a proportion of the equity shares of any other corporation that are owned beneficially, directly or indirectly, by the first mentioned corporation, which proportion shall equal the proportion of the equity shares of the first mentioned corporation that are

owned beneficially, directly or indirectly, or that pursuant to this subsection are deemed to be owned beneficially by that person or group of persons.

(8) Notwithstanding subsection (7), an investment company is not prohibited from making an investment in a corporation only because a person or a group of persons that owns beneficially, directly or indirectly, or is deemed to own beneficially, equity shares of the investment company is by reason thereof deemed to own beneficially equity shares of the corporation.

(9) Notwithstanding any other provision of this section, an investment company is not prohibited from acquiring and holding equity shares of a corporation that it acquires pursuant to an offer for all or a majority of the outstanding equity shares of such corporation, if at the time the offer was made by the investment company, it was not prohibited from investing in such shares.

(10) Notwithstanding any other provision of this section, an investment company may, unless it is prohibited from doing so by a condition in its certificate of registry, make and hold an investment in any corporation that is a parent corporation of the investment company or in any corporation in which such parent corporation would not, if such parent corporation were an investment company, be by this section, prohibited from making provided that:

(a) the repayment of all money borrowed by the investment company, other than money borrowed by it from persons who are substantial shareholders of the investment company or from companies to which the *Bank Act* applies, is guaranteed by such parent corporation; and

(b) such parent corporation is an investment company or complies with the requirements of sections 5 and 6 as if it were an investment company.

(11) For the purposes of subsection (10), a corporation is a parent corporation of an investment company if the corporation owns or is deemed to own beneficially, either directly or indirectly, at least fifty percent of the outstanding equity shares of the investment company.

9. Letters patent shall not be issued under any Act of the Parliament of Canada to incorporate a company primarily for the purpose of carrying on the business of investment without the consent of the Minister; and no supplementary letters patent shall be issued in respect of a registered company without the consent of the Minister.

10. (1) The Minister may, upon application made to him by an investment company, issue a certificate of registry to the company for such term not exceeding one year as he considers appropriate, and the Minister may renew any such certificate from time to time whether or not application for renewal thereof is made to him.

(2) The Minister may, at any time and in respect of any certificate of registry,

(a) reduce the term for which it was issued,

(b) impose any conditions or limitations relating to the carrying on of the business of investment that he considers appropriate, or

(c) vary, amend or revoke any condition or limitation to which it is then subject,

but no power of the Minister under this subsection shall be exercised without the consent of the company to which the certificate in question relates unless that company has been given notice of the Minister's intention to exercise his powers under this subsection in respect of the certificate and a reasonable opportunity has been afforded to the company to make representations with respect thereto.

(3) No certificate of registry shall be allowed to lapse by the Minister except with the consent of the company to which it was issued unless the company has been given notice of the Minister's intention to allow it to lapse and a reasonable opportunity has been afforded to the company to make representations with respect thereto.

(4) The Minister may, upon application made to him by a company that carries on the business of investment but that is not an investment company, issue a certificate of registry to such company pursuant to subsection (1).

(5) Each registered company, while it continues to be a registered company, shall notwithstanding subsection (3) of section 2 be deemed for the purposes of this Act to be an investment company.

11. (1) An investment company incorporated with the consent of the Minister given pursuant to section 9 or by an Act of the Parliament of Canada that comes into force after the coming into force of this Act, shall make application to the Minister for a certificate of registry within two years after the issue of its letters patent or the coming into force of the Act by which it was incorporated, as the case may be.

(2) Subject to subsection (3), an investment company to which subsection (1) does not apply shall make application to the Minister for a certificate of registry within

(a) six months after the coming into force of this Act, or

(b) one hundred and twenty days after the end of the fiscal year of the company in which it became an investment company,

whichever is later.

(3) Where this Act becomes applicable to an investment company

(a) on a day later than the day on which this Act comes into force, and

(b) as a result of the revocation of an exemption granted to it under subsection (2) of section 3,

it shall make application to the Minister for a certificate of registry within sixty days after this Act becomes applicable to it.

12. (1) An investment company to which subsection (1) of section 11 applies shall not borrow money on the security of its bonds, debentures, notes or other evidences of indebtedness before the issue of a certificate of registry to it.

(2) Where

(a) in the case of an investment company to which subsection (1) of section 11 does not apply, the company fails to make application to the Minister for a certificate of registry within the time provided in subsection (2) or (3) of that section that is applicable to it,

(b) notice of a special report made by the Superintendent under subsection (1) of section 13 is given to the company to which the report relates in accordance with subsection (2) of that section, or

(c) the certificate of registry

(i) of a company is withdrawn pursuant to section 15, or

(ii) of an investment company has lapsed and has not been renewed by the Minister,

the company shall not thereafter borrow money on the security of its bonds, debentures, notes or other evidences of indebtedness, unless a certificate of registry is issued to it by the Minister or, except where the certificate of registry of a company is withdrawn pursuant to section 15, the company ceases to be an investment company.

(3) The extension or renewal of any indebtedness that was incurred by a company to which subsection (2) applies prior to the expiration of the time provided in subsection (2) or (3) of section 11 that is applicable to it or prior to the giving of notice of the special report of the Superintendent under subsection (2) of section 13 or the withdrawal or expiry of its certificate, as the case may be, shall, if the extension or renewal does not increase the indebtedness of the company that was outstanding immediately before such time, be deemed not to be a violation of subsection (2).

(4) where any money has been borrowed by an investment company in violation of subsection (1) or paragraphs (b) or (c) of subsection (2), the persons who were directors of the company at the time money was so borrowed are jointly and severally liable to the lenders from whom such money was borrowed and their successors in title,

(a) in the case of a violation of subsection (1), for the amount so borrowed; and

(b) in the case of a violation of paragraphs (b) or (c) of subsection (2) for the amount by which the indebtedness of the company was increased by borrowing.

13. (1) Where, in the opinion of the Superintendent, the financial condition and affairs of an investment company that applies to the Minister for a certificate of registry are such that the ability of the company to repay all moneys borrowed by it on the security of its bonds, debentures, notes and other evidences of indebtedness that are then outstanding and to pay all interest thereon is inadequately secured, he shall make a special report to the Minister recommending against the issuing of a certificate to the company and setting forth his reasons therefor.

(2) The Superintendent shall give notice to a company to which a special report under subsection (1) relates of the making of the report and a copy of the report shall be sent to the company with the notice.

(3) After receipt of a special report made by the Superintendent under subsection (1), and after affording to the company to which the report relates an opportunity to be heard in connection therewith, the Minister, if he agrees with the opinion of the Superintendent, may,

(a) refuse to issue a certificate of registry to the company, or

(b) postpone the decision whether or not to issue a certificate of registry to the company and, by order, specify a period of time within which the company may endeavour to improve its financial condition and affairs to a state that is satisfactory to the Minister.

(4) The period of time allowed by an order made under paragraph (b) of subsection (3) may be extended by the Minister or the order may at any time be revoked by him upon notice of such extension or revocation being given to the company to which the order relates.

(5) Where a company in respect of which an order has been made under paragraph (b) of subsection (3) satisfies the Minister, before the expiration of the time allowed under the order or any extension thereof or before the revocation of the order, that it has so improved its financial condition and affairs that its ability to repay all moneys borrowed by it on the security of its bonds, debentures, notes and other evidences of indebtedness that are then outstanding and to pay all interest thereon is adequately secured, the Minister may issue a certificate of registry to the company in accordance with section 10.

14. Where it comes to the attention of the Superintendent, by any means whatever, that any assets that appear on the books or records of an investment company may not be satisfactorily accounted for and upon investigation the Superintendent believes that any of those assets are not satisfactorily accounted for and that all the circumstances so warrant, he may immediately take control of the assets of the company and may maintain such control on his own initiative for a period of seven days and, with the concurrence of the Minister, for any longer period that the Minister considers necessary in the circumstances.

15. (1) The Superintendent shall whenever

(a) in his opinion the financial condition and affairs of an investment company are such that the ability of the company to repay all moneys borrowed by it on the security of its bonds, debentures, notes and other evidences of indebtedness that are then outstanding and to pay all interest thereon is inadequately secured; or

(b) he has taken control of the assets of an investment company pursuant to section 14

forthwith make a special report to the Minister with regard to the financial condition and affairs of the company.

(2) The Superintendent shall give notice to a company to which a special report under subsection (1) relates of the making of the report and a copy of the report shall be sent to the company with the notice.

(3) After receipt of a special report made by the Superintendent under subsection (1), and after affording to the company to which the report relates an opportunity to be heard in connection therewith, the Minister, if he agrees with the opinion of the Superintendent, may take one or more of the following actions

(a) by order allow the company a period of time within which to improve its financial condition and affairs to a state that is satisfactory to him;

(b) impose such conditions upon the company as he considers appropriate;

- (c) withdraw any certificate of registry issued to the company;
- (d) direct that the company cease to carry on the business of investment;
- (e) direct the Superintendent to take or continue in control of the whole or any part of the assets of the company; or
- (f) direct the Superintendent to relinquish control of the assets of the company.

(4) Where a company

- (a) fails to improve its financial condition and affairs to a state satisfactory to the Minister within the period of time prescribed pursuant to paragraph (a) of subsection (3) or any extension thereof subsequently given by the Minister; or
- (b) fails to comply with any condition imposed pursuant to paragraph (b) of subsection (3)

the Minister may take one or more of the actions described in paragraphs (c), (d) and (e) of subsection (3).

(5) For the purpose of carrying out the provisions of this section, the Minister may appoint such persons as he deems proper, to appraise and report on the condition of the company and its ability, or otherwise, to meet its obligations and guarantees.

(6) An investment company or any other person aggrieved by a decision of the Minister taken under the provisions of this section may apply by summary motion to the Exchequer Court of Canada to revise such decision and such Court shall, after hearing the applicant and the Minister

- (a) affirm the decision of the Minister; or
- (b) rescind the decision of the Minister and make the decision which in the opinion of the Court the Minister should have made in the circumstances.

(7) Any decision of the Exchequer Court of Canada rendered under subsection (6) shall be final and without appeal.

16. (1) Where the Superintendent has control of the assets of a company pursuant to section 14 or 15, the company shall not make any loan or any purchase, sale or exchange of securities or any disbursement or transfer of cash of any kind whatever without the prior approval of the Superintendent or a representative designated by him and a director, officer or employee of the company shall not have access to any cash or securities held by or in respect of the company unless he has with him a representative of the Superintendent or unless such access is previously authorized by the Superintendent or his representative.

(2) At any time that the Minister believes that a company, in respect of which the Superintendent has control of assets pursuant to section 14 or 15, meets all the requirements of this Act and it is otherwise proper for the company to resume control of its assets, the Minister may direct the Superintendent to relinquish control of the assets of the company.

(3) No action lies against Her Majesty, the Superintendent or a representative of the Superintendent for anything done or omitted to be done in good faith by the Superintendent or his representative while the Superintendent has control of assets of a company pursuant to sections 14 or 15.

17. (1) Whenever

(a) An investment company to which subsection (1) of section 11 applies:

(i) borrows any money on the security of its bonds, debentures, notes or other evidences of indebtedness before the issue of a certificate of registry to it, or

(ii) fails to make application to the Minister for a certificate or registry within the time period in that subsection;

(b) An investment company to which subsection (1) of section 11 does not apply fails to make application to the Minister for a certificate of registry within the time provided in subsections (2) or (3) of that section;

(c) An investment company applies to the Minister for a certificate of registry in accordance with subsection (1) of section 10 and such certificate is refused in accordance with section 13; or

(c) Pursuant to section 15 the Minister

(i) withdraws the certificate of registry of an investment company, or

(ii) directs that an investment company cease carrying on the business of investment;

the Minister may apply to a court of competent jurisdiction and upon such application a receiving order may be made against such company as if such company had committed an act of bankruptcy.

(2) Any application under subsection (1) shall be adjourned pending disposition of any prior appeal under subsection (6) of section 15.

(3) Any proceedings under the Bankruptcy Act that could be taken by a creditor who is owed an amount of one thousand dollars by a company to which subsection (1) applies may be initiated or taken by the Minister as if he were such a creditor, against such company, including the filing of a petition for a receiving order and an intervention may be filed on by the Minister in any proceedings under the *Bankruptcy Act* that are initiated or taken by such company or any other person and the Minister may be made a party to any such proceedings.

18. (1) The Minister shall cause to be published, in the last issue of the Canada Gazette published in the month of April in each year after the year in which this Act comes into force, a list of all companies that held certificates of registry on the first day of April of the year of such publication.

(2) Whenever a certificate of registry is refused pursuant to section 13 or withdrawn pursuant to section 15 the Minister shall cause a notice to this effect to be published as soon as possible in the Canada Gazette.

19. (1) The Superintendent shall, as soon as reasonably possible after the termination of each fiscal year, submit to the Minister a report in such form as the Minister may direct on the administration of this Act during that fiscal year.

(2) Where an investment is made or held by an investment company in violation of section 8, the Superintendent, in any special report to the Minister under subsection (1) of section 13 or subsection (1) of section 15 in respect

of that company, may reduce the assets of the company as shown in its annual or other statement by the whole or any part of the value of such investment.

20. (1) The Superintendent shall, annually, and as soon as possible after the beginning of each fiscal year, by reference to the public accounts and after such further inquiries and investigations as he deems necessary, ascertain and certify the total amount of the expenditures incurred for or in connection with the administration of this Act during the immediately preceding fiscal year, and the amount of the expenditures so ascertained and certified is final and conclusive for all purposes of this section.

(2) The Superintendent shall, before the thirty-first day of December following each fiscal year for which the expenditures incurred for or in connection with the administration of this Act are ascertained and certified pursuant to subsection (1), from annual statements and any other information that is available to him, ascertain and certify with respect to each investment company that filed an annual statement for its fiscal year that ended within the calendar year that ended within the fiscal year for which expenditures incurred for or in connection with the administration of this Act were so ascertained, the amount that is one-half of the sum of

(a) the value of the assets of the investment company as of the last day of its fiscal year preceding its fiscal year to which such annual statement relates, and

(b) the value of the assets of the investment company as of the last day of its fiscal year to which such annual statement relates,

(in this section referred to as its "mean assets") and the amount so ascertained and certified pursuant to this subsection are final and conclusive for all purposes of this section.

(3) Upon completing the ascertainment and certification of expenditures incurred and of mean assets of investment companies as required by subsections (1) and (2) for a fiscal year and for fiscal years of investment companies ending within the calendar year that ended within such fiscal year, respectively, the Superintendent shall prepare an assessment against each investment company the mean assets of which were so certified in the amount that bears the same ratio to its mean assets as so certified as the amount of the expenditures incurred and so certified bears to the aggregate of the mean assets of all investment companies the mean assets of which were so certified; and such assessment, when certified by the Superintendent, is binding on the company against which it is made and is final and conclusive for all purposes of this section.

(4) An amount assessed against an investment company pursuant to subsection (3) or (5) constitutes a debt due to Her Majesty payable upon demand of the Superintendent and recoverable as such in the Exchequer Court of Canada or any other court of competent jurisdiction.

(5) Where a company that was an investment company at the time an assessment was prepared by the Superintendent pursuant to subsection (3) was, at that time, in arrears in filing an annual statement under section 5, and no assessment was then prepared against it, the Superintendent may, at any time, prepare and certify an assessment against the company in the amount that

bears the same ratio to its mean assets in its fiscal year in respect of which the assessment is prepared as the amount of the expenditures incurred and certified under subsection (1) in respect of the relevant fiscal year bears to the aggregate of the mean assets of all investment companies the mean assets of which were certified under subsection (2) before the thirty-first day of December following that fiscal year for that fiscal year; and any such assessment shall be payable with interest calculated thereon at the rate of six per cent per annum from the date on which a demand therefor would normally have been made by the Superintendent if the company had not been in arrears in filing its annual statement.

(6) Any amounts paid to or otherwise received by Her Majesty in any fiscal year on account of assessments made pursuant to subsection (5) shall be deducted from the expenditures incurred for or in connection with the administration of this Act for the purpose of ascertaining and certifying the total amount of such expenditures pursuant to subsection (1) for that fiscal year.

21. The Governor in Council may make such regulations not inconsistent with the provisions of this Act as he considers appropriate to insure the proper carrying out of such provisions.

22. The Superintendent may

(a) prescribe such forms as he considers appropriate for the purposes of this Act;

(b) prescribe the information to be contained in an annual statement; and

(c) appoint or designate any person as an inspector for the purposes of this Act.

23. Where by this Act notice is authorized or required to be given to an investment company, the notice may be given by registered letter addressed to the company at the postal address of the head office of the company that is of record in the Department of Insurance or with the member of the Queen's Privy Council for Canada charged with the administration of the *Canada Corporations Act*.

24. The Superintendent shall file with the member of the Queen's Privy Council for Canada charged with the administration of the *Canada Corporations Act* a copy of each certificate of registry issued to a company incorporated by letters patent and of each amendment or renewal of any such certificate and shall give notice to him of any exemption granted to such a company pursuant to subsection (2) of section 3 and of the revocation of any such exemption.

25. Nothing in this Act affects any right or remedy of a person who lends money to a company to which this Act applies on the security of bonds, debentures, notes or other evidences of indebtedness of the company.

26. (1) Every investment company that fails to apply for a certificate of registry within the time prescribed in section 11 that is applicable to it, and every director or officer of the company who knowingly and wilfully authorizes or permits such default, is liable on summary conviction to a fine not exceeding ten thousand dollars.

(2) Every director, officer, servant or auditor of an investment company who wilfully makes any false or deceptive statement in any account, statement, return, report or other document respecting the affairs of the company, or uses any false or deceptive statement in any account, statement, return, report or other document respecting the affairs of the company with intent to deceive or mislead any person, is guilty of an indictable offence punishable, unless a greater punishment is in any case by law prescribed therefor, by imprisonment for a term not exceeding five years.

(3) Every director, officer, servant or auditor of an investment company who

(a) refuses or wilfully neglects to make any proper entry in the books of the company, or

(b) negligently prepares, signs, approves or concurs in any account, statement, return, report or document respecting the affairs of the company containing any false or deceptive statement,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

(4) Every person who does, causes or permits to be done any matter, act or thing contrary to any provision of this Act, the regulations or to any order or requirement of the Minister or the Superintendent made under this Act, or omits to do any matter, act or thing that by this Act, the regulations or any order or requirement of the Minister or the Superintendent made under this Act is required to be done by or on the part of such person is, if no other punishment for such act or omission is provided in this Act, liable on summary conviction to a fine not exceeding five thousand dollars.

27. All fines imposed pursuant to this Act belong to Her Majesty in right of Canada and shall be paid to the Receiver General.

28.(1) Every investment company that makes default in filing an annual statement incurs a penalty of ten dollars for each day during which such default continues.

(2) A penalty incurred under this section is a debt due to Her Majesty and is recoverable as such in the Exchequer Court of Canada or any other court of competent jurisdiction.

(3) The Minister, on the recommendation of the Superintendent, may remit all or any part of a penalty incurred under this section.

29. This Act shall come into force on a day to be fixed by proclamation."

Respectfully submitted,

Salter A. Hayden,
Chairman.

THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

EVIDENCE

Ottawa, June 18, 1969

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-17, respecting Investment Companies, met this day at 10.30 a.m. to give further consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have before us Bill S-17. A great deal of work has been done on this bill, which has now come to fruition. There is now being distributed to you what we call a revised draft of Bill S-17. In due course I will give you the history of the work that was done. You will recall that at one stage after we heard all the evidence we appointed a subcommittee, which on your instructions also retained counsel. We devoted considerable time, as I, Senator Flynn and Senator Desruisseaux can testify, in conferences with our counsel in studying this, and in consultation with Mr. Humphrys at all times, with the object of producing as good and effective a bill as would be possible in the circumstances, considering the weight to be attached to the evidence given by all these responsible organizations.

However, if you will let me have a few moments, there are some preliminary remarks I should like to make. This bill has given rise to some criticism of the chairman of this committee. While I am not unaccustomed to criticism—that is part of the lawyer's life and trade—this is the kind of criticism that has no foundation in fact, and it is very disturbing. I am mentioning it today because it reflects on the chairman of the committee, it also reflects on the committee, which is described as the "Hayden Committee," and indicates that the committee was influenced by the Chairman to take a certain course of action.

On June 7, apparently a question had been asked in the House of Commons and an an-

swer was given to Mr. Knowles. The *Toronto Star* of June 7 reports Mr. Knowles as saying certain things outside the house, as a preliminary that the chairman of the Banking, Trade and Commerce Committee is a director of 25 companies. By arithmetical calculation it is actually 22. Mr. Knowles is reported as saying:

"No matter how honest a man is, if he sits on the boards of various companies, and legislation comes before him which would adversely affect those companies and he votes to water down the legislation, what else can you conclude except that his connections have influenced him?"

He said the investment companies bill, which is designed to make such companies report publicly on their financial affairs, has been watered down by Hayden's committee.

Knowles said the bill affected some of the companies with which Hayden is connected, "and he should have disqualified himself from dealing with it."

However, the significant things here are these. It was said there were some companies of which I was a director that were adversely affected by this bill. I will comment on "adversely" in a moment. The bald statement of fact is this. I am a director of a bank. It could not be that directorship which should disqualify me because banks, companies subject to the Bank Act, are specifically exempt in Bill S-17, and were so when the bill came before us.

I should then say that the qualifications, if you want to call it that, to make you subject to the bill are these: that a company must borrow money on the security of its bonds, debentures, notes or other evidence of indebtedness, and in the form in which the bill came before us it must use its assets or some part of its assets to make investments. That is

the basic test. Those are the conditions that a company must meet if it is going to be subject to Bill S-17, and the reporting, inspection and registration that are required, and for the very legitimate purpose of protecting the interests of those who advanced money to a company for these investment purposes.

With that background we rule out, right away, a directorship of a bank. That brings the total down to 21 companies, and of those 21 not one would be subject to the reporting and registration procedures under this bill. Of those 21 there are only three having either outstanding bonds or debentures, and when you apply the additional tests that occur in Bill S-17, these companies would not become subject to the reporting and registration, et cetera, that are required. That is something that could easily have been determined.

First of all, if you are a director of a bank you know that once a year the bank must file with the Department of Finance, through the Inspector General, a list of the directorships held by each of its directors. Therefore, the list is there and it is available in many other places. I suspect that one of the companies, called Veme Investment Limited, may have attracted the comment that was made, as the word "investment" may have been the flag that triggered this conclusion that some companies of which I am a director were subject to this bill. All it would have taken was one question to me in order to find out that in Veme Investment, the word "Veme" was made up of a couple of letters in the first names of a husband and wife. It was a personal holding company of the husband and the wife and they needed a third director. Since they are good friends and clients of mine, I agreed to be that director. They borrow no money. They would in no way be subject to this bill.

This word investment may have triggered it. That anything in a name should lead to an allegation that the chairman of the committee acted improperly and influenced his committee to water down a bill, is too careless an approach on which to base such an allegation. The bill is only now being considered by this committee; we had the bill before us and we heard a tremendous amount of evidence. We then set up a subcommittee. The subcommittee has been working in conjunction with Mr. Humphrys in every step we have taken in our studies. Mr. Humphrys has sat in on the conferences of the subcommittee.

There were postponements because of the fact that Mr. Humphrys had to get his instructions from the minister who was away part of the time. There has been no delay and I have not been instrumental in delaying the passage of this bill. That is a completely wrong statement.

Anyone studying this bill will realize that the first report we had from Mr. Humphrys on his study of the evidence, was dated April 29th. The last sitting of the Committee was March 19 at which time we were intending to hear from Mr. Humphrys as to his comments regarding all of the evidence. He said that he had not had time to analyse the evidence nor an opportunity to see the minister, who I think was out of the country for a while. Subsequently all the evidence was reviewed and a redraft was made of the bill and this went to Mr. Humphrys. We again had a half-day conference with him on June 3, out of which we completed the product which is before you and which has been in the possession of Mr. Humphrys. On every step of the way we have used his time as best we could, and there has been no delay. To say that the committee delayed and watered down the bill and that it did so under my influence is completely wrong. Also to say that the committee voted is incorrect, because the committee has not voted yet.

This is all unfortunate. My friends will not be affected by this sort of allegation, but one would have thought that when contemplating an allegation of this kind, which really touches on the integrity of the chairman, there might have been some examination made to ascertain whether any change was made by this committee to help a company that was adversely affected and of which I am a director.

What I am stating is a fact. These companies would not be subject to the reporting procedure, et cetera, of the bill. It is unfortunate, but when the big lie gets on its way the answer very seldom catches up with it. What you must do is to rely on the confidence which your friends have in you. I am prepared to do that and let the lies go where they will.

Senator Connolly (Ottawa West): After listening to what Senator Hayden has said, I should like to move, formally, that this committee has every confidence in its chairman and that this confidence has been justified over the years by the work the chairman has

done in this committee to improve the legislation that comes before it.

Senator Flynn: I second that. I have been working with the chairman in the subcommittee to this bill which has been referred, and I can testify to his complete objectivity. I am not so sure that the person in the other place who made those allegations has shown objectivity towards the Senate. I remember having read, when the problem of the amendment made to this bill was discussed in the other place, that the gentleman in question was prepared to vote in favour of any amendment moved by the Government, as long as it would contradict what we had done here. He said, "If it comes from the Senate I would be pleased to change and modify it." That is the kind of objectivity that I would not compare to the one of the chairman.

Hon. Senators: Hear, hear.

The Chairman: Can we get down to the business of the meeting? We have Bill S-17 before us. I am not suggesting to you that this draft bill, in the form in which it is now, is necessarily the form in which it may ultimately go out of this committee, because I understand that Mr. Humphrys has indicated some technical amendments which may have to be discussed.

The basic differences in this bill, as against S-17, which originally came in to us, is that instead of providing the test for the borrowing of money on the security of bonds, debentures, notes and evidence of indebtedness and the use of the assets or part of them for the loaning or investment purposes set out in the bill, the committee took concept that the real object of the bill was to follow, by the reporting and inspection and registratin procedures, the investment of the proceeds of the borrowing. So we did make a change in the definition of business of investment, and you will find it in this bill. We have taken out the words "and using the assets or part of them for this purpose" and we have provided "the use of some or all of the proceeds of the borrowing" for the purposes which are defined in the bill.

This fits in with the minister's view on this. I was reading his speech—and I am sorry I have not got it with me this morning—he made at the Seignior Club in May. He discussed in some detail the functions and purposes of this bill. In the language that he used in regard to purposes, he said that it was to

check on borrowed moneys and the use of those funds for purposes of investment, and that means the use of the proceeds.

So Mr. Humphrys and the subcommittee, while they had that deference in point of view, it was not a difference in principle, because the principle of the bill is to check on the investment practices of companies who borrow money from the public and then use it to do the variety of things that are set out in the section to ensure some measure of protection to the lenders.

Administratively, it may have presented—Mr. Humphrys thought it would—greater problems in administration to follow the proceeds rather than just take the obvious course, namely, to use as a base the assets. We have put into this bill a number of things to make the administration easier. For instances, we have provided that if there is not a disclosure in a prospectus that is filed as to the purposes for which the borrowed money is being used, it is stated very specifically that the presumption which the company will have to meet is that the proceeds were used in such investment purposes. In other words, if the borrowing company which is going to invest does not describe in detail the purposes and show how the money is to be used, then the presumption is that the proceeds were used for investment purposes.

We have also put some limitations into the bill. Mr. Humphrys had a limitation that if not more than 25 per cent of the assets were used for such investment purpose, the company was not subject to the bill. If more than 25 per cent of the assets were used for investment purposes, as described in the original bill, then such a company was subject to the provisions of the bill if it had borrowed the money that was so used.

In the first series of amendments which Mr. Humphrys proposed, one of them was that the 25 per cent be raised to 40 per cent, which is the line of demarcation in the corresponding American legislation on investment companies. First of all, the money is borrowed. If more than 40 per cent of the assets are used for investment of the character described in the bill, then the company is an investment company. But if not in excess of 40 per cent of the assets are so used, the company does not qualify for reporting, inspection, et cetera, under this bill.

We also put in another provision, on Mr. Humphrys' suggestion, that if the borrowing

were an amount not more than one-third of the equity that would be the aggregate of the capital and surplus of the company, there would be ample protection to any creditors and it would not be necessary or useful that such a company should clutter up the procedures of this bill by having to report and register. We put such provisions in the bill.

We made another major change, and I think any person who sat in on the committee meetings would have noted that I was the one who more or less took the lead on this point.

If you recall the sanctions in this bill, the registration and the sanctions were not to come into force for two years, but the reporting and the inspection procedures were to come into force within a limited period of time after the bill was proclaimed. I raised the question that if the reporting and inspection procedures disclosed a situation in which there was a deficiency in the assets as against the liabilities and/or where it appeared that the company was in such a position that it was not likely to be able to meet its carrying charges, Mr. Humphrys had no authority under the bill as it was presented to us—although there may have been other ways in which the matter could have been dealt with—to take any steps because the sanctions were not in force.

I suggested at that time—and it is in the record—that I would not want to be the minister in charge of this bill if I had to sit waiting for two years for sanctions to come into play, and knowing that within that period of time there was information of this sort in relation to an operating company in the records.

That was an impossible situation. So we have made provision in the bill for sanctions to come into force when the bill comes into force. I appreciate that, as far as Mr. Humphrys is concerned, this presents problems in administration, because he was looking to this expanded period so as to be able to sort out all the reporting companies and their purposes and functions and establish some kind of a system for administration. However, it was the view of the subcommittee, on balance, that the bill should in its entirety be an effective instrument at the moment it comes into force—whatever may be the difficulties of administration by reason of that.

I think those are the two major changes.

There is one further point. I think it is fair to say, under a direction of the Superintend-

ent of Insurance—I realize the policy was set by the Government—in four bills that came before us—that is, the amendments to the Canadian and British Insurance Companies Act, The Foreign Insurance Companies Act, The Trust Companies Act, and The Loan Companies Act, the sanctions were strengthened beyond the sanctions provided in this bill. We thought that this bill should have the strongest sanctions possible. Therefore, we adopted the sanctions in these later bills.

One of the really strong ones which we incorporated I will refer to particularly. It was the sanction under which the Superintendent, the moment he obtains information as to any weakness or deficiency or inability to meet current obligations, can go in right away and take possession of the assets. This is a very desirable and necessary thing, having regard to the history of some of the failures that have taken place, and when at a later date examination has been made the assets have disappeared.

These are the chief changes. Of course, you might have expected that we would cut down to size the provision with respect to regulations. That is, any regulations that are made shall be made in accordance with and pursuant to the provisions of the bill. In the original bill it looked like a special section conferring legislative powers.

Those are the general principles. Before we go at the bill, I was wondering if Mr. Humphrys would like to comment in a general way. Mr. Humphrys, I know you have points you want to raise in connection with certain sections. However, generally, on the scope and effect of the bill and the manner in which it has gone forward to this stage, perhaps you would like to say something at this point.

Mr. R. Humphrys, Superintendent of Insurance: In the original bill, Mr. Chairman, as I explained when I was before the committee on the first or second hearing, it was recognized that the scope of the definition of investment company was very wide. It was uncertain, and still is uncertain, the variety of companies that might be subject to this bill, and, in an effort to deal with that situation, the original bill provided wide powers for the minister to grant exemptions.

In the evidence presented to the committee in the previous hearings there was much criticism of this approach, principally, it seems, on the ground that companies, which

should not reasonably be subject or need not be subject to this type of supervision, should not be put to the obligation of seeking exemptions. There was also some uncertainty, I think, as to the promptness with which exemptions might be granted, and the possibility of change in the philosophy from minister to minister as to the exercise of that discretion.

The changes proposed by the subcommittee, some of which were proposed to the subcommittee by me with the authority of the minister and the Government, attempted to write into the legislation a description of the kind of companies that we contemplated would be entitled more-or-less automatically to an exemption. This gives rise to some difficulties, because any attempt to write rules for that purpose forces you to establish definitions on lines which, to some extent, are arbitrary.

We had one in the original bill, of course, with a 25 per cent test. This test was changed to 40 per cent, but still is a more or less arbitrary figure. The other test on the liability side, to which the Chairman referred, is also an arbitrary figure, but again it was an effort to establish in broad terms what might be considered as a line demarking more or less small borrowing from major borrowing.

So the refinement, if I may say, of the definition of investment company makes the definition clearer but is still within the broad intention of the original bill.

The second major point to which the Chairman referred was bringing into force at an early date the sanctions and powers under the bill. I don't think anyone would quarrel with that concept in principle. I think the purpose of the legislation and the establishment of a system of supervision is to enable action to be taken where it has to be taken to protect the creditors of companies.

The original concept was proposed from a feeling for the practical problems—a feeling that perhaps it would be inappropriate to purport to be in a position to grant certificates of registry or refuse to grant certificates or registry at a very early date after the act came into force. It was thought that it would be necessary to obtain statements in order to gain familiarity with the variety of companies, and their financial operation and problems, before calling on the minister to assume the heavy responsibility of either granting or refusing to grant a certificate.

It was for that reason that the registration technique and the accompanying sanctions

were proposed in the original bill to come into force at a later date.

The proposal of the subcommittee to bring the sanctions into force at once certainly has attractions from the point of view of the supervisor. He would be just as uncomfortable as the Chairman described the position of the minister, if he knew of bad situations but could do nothing about them.

I should like to reserve a comment on that, Mr. Chairman, when that portion of the bill is reached in the discussions, in order to propose that, even though the sanctions may come into force, if this be your decision, when the act is proclaimed, there might be some provision concerning the certificates of registry so that there will be no expectation that any company will become registered for a period of time. I shall expand on that, Mr. Chairman, at a later point, or, if you wish, I can make a further comment now. What is your wish on that point?

The Chairman: We can deal with that specifically when we come to it.

Mr. Humphrys: The other point is the strength of the sanctions. I don't think that I can take the position, either before this committee or in advising the Government, that the sanctions we recommended, as proposed in the other legislation, were inappropriate or unduly strong. We considered they were necessary in the other context. The reason they did not appear here in the original bill was as a consequence of some hesitation in seeking powers of the same strength, at least until the point had been reached where we were as familiar with the kinds of business that these companies do as we are with the kinds of business that companies do that were subject to the other acts.

However, I believe that the kinds of sanctions that were put forth in the other bills are appropriate, and, indeed, necessary, in the general supervision of financial institutions, and, if it is the committee's thought that sanctions of that power should be in this bill, I don't believe that I could raise a serious objection to them, although I think we would have to note that it would impose heavy responsibilities on the administration at an earlier date than would otherwise have been the case.

Mr. Chairman, I think that is all I have to say at the moment.

Senator Leonard: Mr. Chairman, I understand from your remarks and Mr. Humphrys'

remarks that in due course he is going to suggest some amendments to some of the sections in the draft that we now have before us.

The Chairman: Yes.

Senator Leonard: In line with the general remarks he has just made, do I gather from what Mr. Humphrys has said that the redrafted bill now before us is, in general, satisfactory to him?

Mr. Humphrys: I think there are no points of important principle on which I am instructed to raise any objection, senator.

Senator Leonard: So that, so far as the activities of the Chairman and the subcommittee are concerned, they have, if anything, improved the bill.

Mr. Humphrys: Yes, senator, and I believe that it is a stronger piece of legislation than it was with respect to the companies that are subject to it. It may be that as a consequence of the revision, the definition of "investment companies" arrived at by consultation with the sub-committee and on my part acting on the instructions of my Minister will have the result that some companies which were included under the original bill will not be included under this. But I believe that the legislation as proposed in this draft bill is stronger in its control sanctions than the original.

The Chairman: You would not say it is a watering down of the original, would you Mr. Humphrys?

Mr. Humphrys: No, Mr. Chairman.

The Chairman: We can go through this section by section which may be the best way of doing it. On many of the sections it will not be necessary to pause for more than a moment because they represent no changes. For the remainder we can quite easily indicate the changes as we go along. Will that procedure be satisfactory to you, Mr. Humphrys?

Mr. Humphrys: Yes, Mr. Chairman. However, I would point out that even the sections that appear in this draft as unchanged from the original may contain some points on which members of the committee may wish to direct questions to me, because some of these matters were the subject of criticism by other witnesses to appear before the committee, and I would be happy

to give explanations with regard to any of them.

The Chairman: Proceeding then in that way, if you will turn to the first page where you see "Interpretation" and you will see that in section 2 the significant change is that the words "use of some or all of the assets" for investment has been changed in its relation to borrowings to read "the use of some or all of the proceeds of such borrowing". It is a significant change and is in line with the real purpose of the bill, and it is certainly in line with the remarks which the Minister made at the Seigniori Club in the month of May when he was speaking to the Canadian Life Insurance Association. You will also see underlined in section 2, subsection (1) there is a change in language where we have said "subject to the exceptions in subsection (3) hereof," and we will come back to that again in a moment. But otherwise the language on that page is the language of the original bill as it came to us.

Senator Connolly (Ottawa West): I take it all changes from the original are marked either by underlining or by marginal lining.

The Chairman: Yes, that is generally the case except in paragraph (g) on page 2 dealing with the definition of "investment company". There the language has been changed slightly.

Now, the subsection you should look at is subsection (3) although in subsection (2) which starts "Where a company has borrowed money on the security of its bonds,..." or other securities and has subsequently made loans or purchases as described it shall be presumed, unless the Minister is satisfied to the contrary, to have used the proceeds of such borrowing for such purposes. That is new to tighten up the language by using "proceeds for investment" instead of using "assets for investment". Then subsection (3) is significant because we have provided some exceptions. You will notice the language where it says "notwithstanding the provisions of paragraphs (b) and (g) of subsection (1) of this section the following companies shall be deemed not to be carrying on the business of investment nor to be investment companies for the purposes of this Act:" and then you have a series of paragraphs (a), (b), (c), and (d).

Senator Phillips (Rigaud): Could we stop at (d) and develop that a little more for our benefit. That is the one at the top of page 3.

The Chairman: In connection with the exceptions (a), (b) and (c) at the bottom of page 2, do you have any comment Mr. Humphrys?

Mr. Humphrys: Yes, I would like to make three or four comments about this. This is the portion of the bill where the change in drafting and approach has been most extensive, and I think perhaps the key to the revision. I would like to make a few comments first of all to the preamble under subsection (3). There it states "Notwithstanding the provisions of paragraphs (b) and (g) of subsection (1) of this section the following companies shall be deemed not to be carrying on the business of investment nor to be investment companies for the purposes of this Act:" and I would suggest that it might be sufficient if subsection (3) exempted the defined companies from being investment companies, but did not specify an exemption from the carrying on of the business of investment. The reason for my suggestion there is that subsequently in the bill it is proposed that a company, even though it is not an investment company within the definition, but is a company that borrows money and uses it for investment might apply for registration, if it so wishes. So to make that work, we would like to have the exemption as an exemption from being classed as an investment company, but not an exemption from the concept of the business of investment.

The Chairman: I have talked to our counsel in this matter and it is his view and my own view that striking out that part of the provision does not affect the purpose or intent.

Senator Connolly (Ottawa West): Could we have the words again?

The Chairman: The words to be taken out follow the word "deemed" and they are "not to be carrying on the business of investment nor". We also take out the reference to paragraph (b).

Mr. Humphrys: That means taking out in the fourth and fifth lines of paragraph (b) of subsection (1) of section 2 the words "subject to the exceptions in subsection (3)".

The Chairman: Surely it is all right to leave that in. It meets the provisions in paragraphs (b) and (g) "nor to be investment companies for the purposes of this Act)". Now would you like to comment on (a), (b) and (c). Is it agreed to strike out those words?

Mr. Humphrys: On (a) and (b) the draft states that the company shall be deemed not to be an investment company if it is a company of one of these types:

(a) A company not more than forty per cent of whose assets, valued in accordance with the regulations, are at any time during a year used as described in subparagraphs (i) and (ii)...

The same time concept appears in paragraph (b):

A company, the outstanding debt of which, including debts of any person the payment of which is guaranteed by the company, does not at any time during a year exceed twenty-five per cent of the aggregate of such outstanding debt and the paid-up capital and earned surplus...

In considering this problem from an administrative point of view, we had some hesitation about having to apply tests of this type at any time during the year, since we felt that this could involve a situation where you might have to have a day-to-day record of the company's assets portfolio and its liabilities. Therefore, we felt it would be appropriate, from an administrative point of view, to apply these tests at the end of the company's fiscal year.

The Chairman: We had given thought to that and, as a matter of fact, the draft at one stage contained the single time—that is, to make this determination at the end of the year; and then we felt this would make it easy for a company to adjust over the year and within the percentage limits here, so as not to be faced at the year end, when you apply your test, only with one time for the reporting procedures in this bill. So we put in the words "at any time during the year" not intending the Superintendent would have to keep a day-to-day supervision, but at any time during the year he could go in and if he found this situation he could require them to register.

Senator Connolly (Ottawa West): Is the requirement to report an annual one only?

The Chairman: There is an annual statement under this bill.

Senator Connolly (Ottawa West): They only report annually?

Mr. Humphrys: Unless they are required to do otherwise, normally it is an annual requirement.

Senator Phillips (Rigaud): May I put a question with respect to (3)(b): "earned surplus"? Is there any significance to the interpretation of the word "earned" as distinct from "capital surplus"? After all, we are considering the relationship of debt to the real worth of the company.

The Chairman: I agree that we strike out the word "earned".

Senator Connolly (Ottawa West): Where is that?

The Chairman: In subclause (b), the second last line, so that when you are relating to the borrowings, if they do not exceed 25 per cent of the aggregate of the outstanding debt...

Mr. Humphrys: I think it should be, "the paid-up capital and the surplus".

The Chairman: "The paid up capital and the surplus"—agreed?

Hon. Senators: Agreed.

The Chairman: Is there any further comment on "at any time during the year"? I have told you our purpose in putting it in. We wanted the Superintendent to have such power that if, in his inspection procedures, he goes in at any time during the year and finds a company in a position where it should have registered, instead of leaving the language such that for some of the companies they could, if they are 43 per cent or 44 per cent, slip back to 40 per cent or 39 per cent at the end of the year, they might not be compelled to do any registration.

Senator Hollett: Are these amendments of the subcommittee, and when you say "we" you mean the subcommittee?

The Chairman: Yes.

Senator Connolly (Ottawa West): With regard to clause (3)(a), would it help, after the word "are", to say, "are by the Superintendent discovered at any time during the year..."? Would that help you?

Mr. Humphrys: I think, senator, that the law should speak on whether the company is an investment company or not, rather than make it depend on the activity of the Superintendent.

The Chairman: There is a further amendment, I understand, Mr. Humphrys, that if we are going to leave in the words "at any time during the year" there is a qualification

you would like to add there. I have seen it and I agree it is a sensible thing to add.

Mr. Humphrys: If the words "at any time" are retained, if the concept of these tests being applied at any time is retained, I would suggest that they be referred to "at any time during the company's current or last complete fiscal year". The reason I make that suggestion is that if we are left without that qualification, we would be forced really to go back indefinitely in a company's history to see if at any time it failed these tests. If it were confined as I have suggested, it would not be necessary to go back beyond the start of the last completed fiscal year.

The Chairman: I do not see any difficulty in that. Is it agreed that we make those changes and retain the words "at any time during a year"?

Senator Molson: Why not the current year?

Mr. Humphrys: "during the current and last preceding".

The Chairman: "at any time during the company's current or last complete fiscal year".

Mr. Humphrys: I think so, because we may not know until we get the financial statement at the year end.

Senator Hollett: What is the difference?

The Chairman: It would be, "at any time during the company's current or last complete fiscal year"—is that agreed?

Hon. Senators: Agreed.

Mr. Humphrys: It should be recognized, if I may just add, that leaving the test "at any time" means that any company that is close to these limits is really in a position where it must watch very carefully its position, because if it fails the tests, in the sense if at any time during the year it goes over 40 per cent and the 25 per cent, then it is an investment company, and the penalties and sanctions of the act apply to it by the force of law, even though we do not know and they do not know.

The modification we have put in would at least cut the situation off, and you would not have to go back more than one or two years. I just want to make that clear.

The Chairman: That same amendment would be made in (b), where we say "at any time during a year".

Mr. Humphrys: Yes, and I think a corresponding concept should be written in to paragraph (D), because the way it is drafted now it says:

(d) A company that borrows exclusively from

banks a major shareholder is not an investment company.

If a company at any time during the course of its history borrows from somebody else, it would lose its exemption. So, I think it would be consistent with the point we have just discussed, it (d) were written to say:

A company that was not at any time during its current or last completed fiscal year indebted in respect of money borrowed by it to persons other than persons who were at that time:

(i) companies to which the Bank Act applies;

(ii) substantial shareholders of the company within the meaning of paragraph (b)...

Senator Carter: When you use this term "or" are you imposing two conditions, or is that an alternative?

The Chairman: They are alternative.

Senator Carter: They do not look alternative, the way this reads.

The Chairman: Well, they are alternative.

Senator Phillips (Rigaud): I have not had time to study this carefully. Have we dealt anywhere with the subject-matter of the balance of sale in respect of an acquisition of an asset, whether that is deemed to be a debt? We have a definition of "borrowing", but we have only excluded Nos. 1, 2 and 3. What about a company that acquires an asset and, in effect, through a balance of sale is really borrowing money?

Mr. Humphrys: For example, buying a piece of real estate with a mortgage on it?

Senator Phillips (Rigaud): Yes. In effect, legally it is a debt.

Mr. Humphrys: It is a debt. I had not thought that encumbrances on the property would be considered as money borrowed by the purchaser. It is an encumbrance on the property and a debt.

Senator Phillips (Rigaud): I would like to leave that for further consideration.

The Chairman: Can we now settle the language you were proposing, Mr. Humphrys in (d)? Would you read it?

Mr. Humphrys: The wording is:

A company that was not at any time during its current or last completed fiscal year indebted in respect of money borrowed by it to persons other than persons who were at that time...

Then come (i) and (ii).

The Chairman: And the words "borrows exclusively"?

Mr. Humphrys: Would be struck out.

The Chairman: They are struck out?

Mr. Humphrys: Yes.

The Chairman: The suggestion is that in (d) we say in the first line:

A company that was not at any time during its current or last completed fiscal year indebted in respect of money borrowed by it to persons other than persons who were at that time...

Then (i) and (ii) come in—"companies to which the Bank Act applies" etcetera.

Mr. Humphrys: I think that would be consistent with the (a) and (b) tests.

Senator Hollett: Where does the word "borrows" come in?

Mr. Humphrys: "...indebted in respect of money borrowed by it".

Senator Leonard: Is there any difference between "last fiscal year" and "last completed fiscal year"?

The Chairman: I would not have thought so, and I was wondering about the significance of "completed" there.

Mr. Humphrys: It is just for more precision.

The Chairman: It is making what is obvious more obvious. I do not think it adds anything, does it?

Mr. Humphrys: No. When we are being very precise I suppose we could say, "most recently completed fiscal year".

Senator Connolly (Ottawa West): Does it now read:

A company that was not at any time during its current or last fiscal year indebted

in respect of any money borrowed by it to persons other than persons who were at that time...

Then you strike out the "borrows exclusively" and it goes on:

(i) companies to which the Bank Act applies; etcetera.

Mr. Humphrys: Yes.

Senator Hollett: The word "borrows" has to come in somewhere.

Mr. Humphrys: It is if the company was not indebted in respect of money "borrowed by it". You see, this is an exclusion. If the company was not at any time indebted in respect of money borrowed by it other than to banks and to major shareholders in a defined period, it is exempt.

Senator Hollett: Where do subparagraphs (i) and (ii) come in?

The Chairman: They follow.

Senator Hollett: I thought the company was to borrow from these companies.

Mr. Humphrys: If a company was not indebted to anyone other than these companies, then it is exempt.

Senator Hollett: I have not got it yet.

Mr. Humphrys: If a company was indebted in respect of money borrowed only to banks and to major shareholders it would be exempt from the act.

Senator Hollett: Could you read the whole thing once more and continue on with subparagraphs (i) and (ii).

The Chairman: It reads:

a company that was not at any time during its current or last completed fiscal year indebted in respect of money borrowed by it to persons other than persons who were at that time...

Then it drops down to subparagraph (i):

companies to which the Bank Act applies; or

(ii) substantial shareholders of the Company.

Senator Hollett: Then you do not have to borrow at all according to that.

Senator Connolly (Ottawa West): These are the exclusions. That type of company is excluded.

The Chairman: One of the essentials to be subject to this bill is that you must borrow money. If you do not borrow money the bill does not affect you at all. Even if you borrow, it does not necessarily mean you are subject to the bill if you come within these exclusions; that is, if your borrowing is from a bank or from substantial shareholders of the company.

Senator Hollett: We will see it again.

The Chairman: Yes. All I want to know is whether we are going to fuss about the use of the word "completed".

Senator Leonard: It was just a suggestion.

The Chairman: Are you wedded to it, Mr. Humphrys?

Mr. Humphrys: I have no strong feeling. I do not know what Mr. Hugessen thinks of it.

Mr. James K. Hugessen, Special Counsel to the Committee: I do not think it makes much difference.

Mr. E. Russell Hopkins, O.C., Law Clerk and Parliamentary Counsel: Is the expression "fiscal year" used elsewhere, which might lead to confusion?

The Chairman: No.

Mr. Hopkins: I think it is all right.

The Chairman: Looking at:

during its current or last fiscal year.

I am wondering whether you are not moving the test back. Is not the borrowing intended only to relate to the current year? This wording takes you back to the previous year.

Senator Leonard: The existing wording takes you back indefinitely, does it not?

The Chairman: I agree, yes.

Mr. Humphrys: The reason I suggested this wording is that normally we would get information on these matters from companies' annual statements. If you get the statements filed showing the situation for a particular year you might wish to take action on that.

Senator Connolly (Ottawa West): I take it that the information about what had happened in the last completed fiscal year or in the current year would not be disclosed in the annual statement?

Mr. Humphrys: Not necessarily.

Senator Connolly (Ottawa West): You would have to find out as a result of inquiry.

The Chairman: Do we settle on this wording, omitting the word "completed"? Is that agreeable, Mr. Humphrys?

Mr. Humphrys: As far as I am concerned, Mr. Chairman, yes.

The Chairman: Mr. Hugessen?

Mr. Hugessen: Yes.

Mr. Humphrys: I have not the benefit of my legal advisers here today. There is one more point I should like to raise in this connection, if I may. Paragraph (g) on page 2 states:

"investment company" means a company (i) incorporated after the coming into force of this Act primarily for the purpose of carrying on the business of investment.

The structure of the act was that such a company that is formed primarily for that purpose would have to have the consent of the Minister of Finance before a charter was granted to it and the fact that it is an investment company would be indicated in its charter.

For that reason, we thought that such a company should be and remain an investment company until specifically excluded, even though at the start of its operations it may not have more than 40 per cent of its assets invested or it may not have started to borrow.

So we would like to have the bill provide that if the company was specifically incorporated as an investment company, then it should so remain and should not be within the specific exclusions described in subsection (3).

I would like to add to the preamble to subsection (3) the words: "unless described as an investment company by subparagraph (i) of paragraph (g)".

The other point then, would be subsection (5) of section 10. You will see that dealt with on page 9.

The bill provides that once a company is registered it remains an investment company until its certificate of registration is withdrawn or lapses. Once a company became registered, we would want it to remain an investment company, even though it might drop below these tests, because once it

becomes registered the public may rely on that, in buying securities or whatnot. And it should so remain, I think until the administration withdraws its certificate.

So, I would suggest, Mr. Chairman and honourable senators, that those two cases might be set aside from the list of exemptions otherwise prescribed by the subsection.

The Chairman: We are on page 2, paragraph (g), at the top of the page.

First of all, I think it difficult, if a company is incorporated after the passage of this bill, and it sets out in its objects, its main object to be for investing purposes, then it is an investment company. I took it that it was an investment company for all time. That is the concept Mr. Humphrys wants?

Mr. Humphrys: Yes, unless it changes its course and seeks special exemption under subsection (3). That is a different situation.

That was my concept, Mr. Chairman, and I thought that the words "notwithstanding paragraph (g) of subsection (1), these companies shall not be deemed..." I thought that defeated the concept.

So I would like to propose that the type of company stated to be incorporated for the purposes of carrying on the business of investment remain an investment company until specifically exempted.

Senator Leonard: If a company is primarily incorporated for that purpose but intends to borrow only, for example, from a bank, do you still think it ought to be treated as being registered under the act and continue to do that? Why should not, in some way, a company that does not intend to borrow under the provisions of the act be able to do that right from the time of incorporation?

The Chairman: I think you may have a point there, senator. That is, if you carry on the business of investment, then you have to look and see whether you meet the test under act, no matter when you were incorporated.

Mr. Humphrys: I think Senator Leonard has a point. My concern is about the (a) and (b) tests, because a new company that intends to launch itself as an investment company, initially may take some months or a year or so before it borrowed money; it may continue on the basis of capital first, but still would want to get to that position.

Senator Leonard: You have that situation.

Senator Molson: Do not those words "primarily for the purpose of" in subparagraph (i)—"primarily for the purpose of carrying on the business of investment"—it could incorporate "primarily for the purpose". Surely to goodness, that would carry you some distance along this line, would it not?

Senator Leonard: Yes, but it still might not be the kind of investment company for which this act was designed. It might intend to operate by borrowing from substantial shareholders, or borrowing from banks only or exclusively.

Senator Molson: That is not the business of investment, is it?

Mr. Humphrys: It is, as defined, in the term "investment company".

Senator Molson: I am sorry.

The Chairman: Is not the test, under your definition of business investment, a test that any company must meet to determine whether it is subject to the bill or not. Therefore, even a company that is incorporated for investment purposes, after the passage of this bill, the fact that we say that it is an investment company still does not rule out, surely, the test. You want it to rule out the test, is that right, Mr. Humphrys?

Senator Leonard: If this company is really going to be an investment company, under this act, then from the time it starts it should be subject to the terms of the act, even though it has then no borrowing at all—even though it has no borrowing except from a bank. Is that right, Mr. Humphrys?

Mr. Humphrys: The bill later provides that the company is subject to penalty if it borrows at all, prior to being registered. So a company being formed to carry on business on investment must become registered before it borrows at all. You have a good point, that if a company tends to borrow only from banks and major shareholders, it should not be under the act.

I think that point could perhaps be met if the kind of company described in subparagraph (i) of paragraph (g) were excluded from (a) and (b), so that it would read "a company other than a company described in (i) of (g), not more than 40 per cent of which...".

Senator Leonard: If we are agreed on what we should do, I think if we could leave it to Mr. Hugessen. Is that the idea?

Mr. Hugessen: Yes, senator, it could easily be done. I understood the problem of the chairman and the subcommittee to be that they felt the companies can change the purposes so easily, and what is a button manufacturer today may be an investment company tomorrow, and vice versa. Really, the concept of the object stated in the letters patent of the company is not terribly important, in terms of whether a company is or is not an investment company. The test is the test as to whether it is carrying on the business of investment. Certainly, it is easy to use the words Mr. Humphrys suggests, if the committee feels that that is the way it should be done.

The Chairman: If we put those words in, we are saying that any company whose primary object, as stated in its incorporation, is for investment purposes, is for it under the bill. Such a company must register; it cannot escape under the tests. Whether it borrows money or not, it must keep on reporting. Now, such a company may raise all its money by sale of shares and this bill does not cover money derived from the sale of shares which subsequently is invested in this fashion.

This bill was designed for the protection of people who lend money to an investment company.

Senator Connolly (Ottawa West): Subsection (5) of section 10 says that each registered company, while it continues to be registered, shall be deemed for the purpose of this act to be an investment company. Suppose it is incorporated as an investment company but does not in fact carry on the business of investment. This section here is not the section requiring it to register.

Mr. Humphrys: But, once it is registered, it is deemed to be an investment company regardless of the composition of its assets subsequently.

Senator Hollett: How many kinds of investment companies are there? Is there one under every act that is passed? I'm thinking of all these acts mentioned in paragraph (g).

Mr. Humphrys: All those defined cases, senator, are specifically stated not to be investment companies. In other words, banks, insurance companies, trust companies and so forth are not investment companies and investment companies do not include any one of those.

Senator Molson: How does the minister let one of these companies out of the bag once he gets it in there?

Mr. Hugessen: If the company was registered as an investment company but did not intend to carry on the business of investment, it could proceed by way of supplementary Letters Patent in the incorporation branch, to change its incorporation.

Senator Molson: In other words, it could be "un-registered" or "de-registered", whatever the term is to undo that particular step.

Mr. Hugessen: Yes, that's right.

The Chairman: My own feeling is that Senator Leonard has raised a substantial point. I would suggest that we let paragraph (g) on page 2 stand for the moment for some discussion between Mr. Humphrys and Mr. Hugessen and we can come back to it.

Senator Connolly (Ottawa West): Mr. Hugessen has suggested that perhaps they might need supplementary Letters Patent because they have not a strict calling to be an investment company. Don't they come under the act, if they are going to do things that the act deals with only if they register?

The Chairman: No. If a company is incorporated primarily for carrying on the business of investment, after this act comes into force it is an investment company that must register. That is so whether or not it meets the qualifications by carrying on the business of investment according to the conditions. It is an investment company, and the only way it can shed that is by getting supplementary Letters Patent cancelling out the investment provisions. If it did that but still continued the investment business it would still be subject to the act because it would then come under the aspect of carrying on the business of investment.

Senator Burchill: What is Mr. Humphrys trying to do here?

The Chairman: Mr. Humphrys is attempting to make a change so that he will make assurance doubly sure that an investment company incorporated after the bill becomes law will be a company that must register.

Senator Burchill: Is that not there now?

The Chairman: Yes, that is there now, I think. What do you think, Mr. Humphrys?

Mr. Humphrys: Subsection (3) on page 2 says:

(3) Notwithstanding the provisions of paragraphs (b) and (g) of subsection (1) of this section the following companies shall be deemed not to be carrying on the business of investment nor to be investment companies for the purposes of this Act:

I thought, therefore, that, if we have a "(g)(i)"-company formed for the purpose of carrying on the business of investment and it starts into the business—first selling some capital stock and then investing the proceeds—it would not, until it borrows money and meets that test, be an investment company.

The Chairman: That is the intention of the exception, isn't it? You have a general statement of what the law and its application are and then you say, notwithstanding that, this is an exception.

Mr. Humphrys: Our point was, Mr. Chairman, that, if a company was formed specifically for the purpose of carrying on the business of investment we wanted to have it registered under the act before it started to borrow at all rather than wait until it had met this test. I think, if we wait until it meets this test, we might as well drop the concept of companies being formed primarily for the purpose of carrying on a business of investment and just say that any company, regardless of when it is formed and regardless of its purpose, when it comes under this test, is in. But the reason we proposed this in the original bill is that we thought, looking to the future, that companies would be formed for carrying on the business of investment, and it would be an important feature of supervision to be in at the start. It is important to be able to talk with the proposed incorporators and discuss the capitalization and the plans of the company and have it registered before it launches business. That was the reason for putting that concept in.

The Chairman: Isn't that sort of extending it to a kind of grandfatherly care?

Mr. Humphrys: It is the pattern followed in all other types of companies we supervise, senator. If they are going into the kinds of fields that are within a supervised area, we want to be in at the start rather than wait until they have built up a certain amount of liability.

The Chairman: But, if a company is incorporated after this bill becomes law and raises its money by the sale of shares, why should it in any concept of this bill be subject to the bill?

Mr. Humphrys: It should not be, Mr. Chairman, if that is its intention. However, there will be companies that will be formed clearly for the purpose of carrying on the business of investment. There might be, for example, a sales finance company which would obviously fall within the concept here. Our proposal was that, if such a company seeks incorporation, it should be incorporated with initial indication that it is subject to the act, and it should seek registration before it begins to borrow.

Senator Molson: Why don't you say that? Why not say that no company shall commence business until it is registered, if it is incorporated primarily for these purposes?

Mr. Humphrys: That is what we have done later on, senator. My point was that I was concerned that the exemptions in subsection (3) were raising a doubt about whether it had to be registered or not, and I was trying to clear the doubt. I think the Chairman's suggestion that, if Mr. Hugesson and I can try to work out some wording that meets this point and meets Senator Leonard's point, we can accomplish what I am seeking and meet your point also, senator.

Senator Leonard: It is question of bridging the two.

The Chairman: Is that agreed?

Hon. Senators: Right.

The Chairman: Now we move over to the bottom of page 2. We had not dealt with paragraph (c):

(c) A company that is engaged solely in the business of underwriter of or broker or dealer in securities and is licensed as such by a public authority of any province;

Is that agreed?

Hon. Senators: Agreed.

The Chairman: We have dealt with (d) on page 3, and now we come to subsection (4) which says...

For the purposes of this Act, a corporation is a subsidiary of another corporation only if...

Are there any objections to that?

Senator Hollett: I think it should be written because of the way it reads.

(a) It is controlled by

(i) that other or

(ii) that other and one or more corporations each of which is controlled by that other, or

(iii) two or more corporations each of which is controlled by that other; or

(b) It is a subsidiary of a subsidiary of that other corporation.

Is there no other way to do that?

The Chairman: Well, senator, I think you should have made objection to this section at a much earlier time because this is copied out of the Canada Corporations Act word for word.

Senator Hollett: I was not around then.

Hon. Senators: Carried.

The Chairman: Now we come to subsection (5), and this rule is designed to exclude bona fide industrial holding companies from the operation of the Act. You will remember, for instance, when Massey-Ferguson and other companies appeared that their method of carrying on their industrial operation was that they had a holding company at the top and they had corporate arms or tools in various jurisdictions carrying on the industrial operation. This subsection (5) on page 3 is intended to deal with that type of situation, and it says:

(5) For the purposes of paragraph (a) of subsection (3) there shall be excluded from the assets of a company any loans to or shares, bonds, debentures, notes or other evidences of indebtedness of any subsidiary of such company if,

(a) at least seventy-five percent of the equity shares of such subsidiary are owned by the company, and

(b) not more than forty percent of the assets of such subsidiary, valued in accordance with the regulations, are used as described in subparagraphs (i) and (ii) of paragraph (b) of subsection (1).

Have you any comment to make on that, Mr. Humphrys?

Mr. Humphrys: There are two points I would like to draw your attention to. The first is that by excluding assets of this type from the test in paragraph (a) a situation could arise where a company would be an invest-

ment company on the basis of a very small quantity of assets. It is, of course, an extreme case, but I would like to draw the attention of the committee to it. For example, if an industrial holding company had 90 per cent of its assets as shares of an operating subsidiary, then in applying the test in paragraph (a) of subsection (3), we would look at only the remaining 10 per cent of its assets, and if 40 per cent of that 10 per cent were investments, the company would lose its exemption under (a) unless it found an exemption under a different category. I am not raising an objection to it, but I would like to draw that point to the attention of the committee. The second point I would like to make is that the subsidiary would be tested on the basis of its assets without any recognition of an investment in its own subsidiaries, so that it would not get this same kind of a test.

The Chairman: Are you suggesting that we should go to the next generation?

Mr. Humphrys: I would not like to make any suggestion of that kind. I just wish to point out that it is a one-generation test.

The Chairman: As a one-generation test, is that satisfactory to you?

Mr. Humphrys: Yes.

The Chairman: Or would you want it to be extended to include subsidiaries of subsidiaries?

Mr. Humphrys: We are not seeking to expand the exemptions, Mr. Chairman.

The Chairman: We are not seeking to expand them unnecessarily. We have considered that if situations like this develop there might be a necessity for amendments. I do not think we are going to design a bill that will never have to be amended.

Senator Molson: I am not at all clear on (a). From what Mr. Humphrys has said, according to my understanding of it, a company might have 4 per cent of its assets used as described and therefore might become an investment company. This does not make sense. If 90 per cent is in subsidiaries, it leaves ten per cent, and forty per cent of that 10 per cent represents 4 per cent of the assets of the company. What is the object of this? Is it a contradiction? Perhaps I am not clear on it.

Mr. Humphrys: I think this is a situation which could possibly arise, but it is an extreme situation.

Senator Molson: But if a company is set up so that the majority of its operations are conducted through subsidiary companies, it could very easily apply. We have companies in the same line of business side by side, some of which are on division and some of which have their own subsidiaries. This would apply to one and not to the other just by virtue of the structure, and I do not think that is the object of the exercise.

The Chairman: Well, senator, I think Mr. Humphrys said he was describing an extreme situation. If you take an industrial holding company and it has a chain of subsidiaries carrying on industrial operations and the financing goes from the parent companies to those subsidiaries by way of loans and the taking of bonds, debentures or notes, then you exclude all those from the borrowings of the parent company for purposes of deciding whether this parent company is carrying on the business of investment. Now the parent company may have no other borrowings other than money it has borrowed for the purpose of putting the subsidiaries in funds. I am trying to figure out if you exclude from the assets of the parent company the loans, etc. to shareholders—of course since it owns 75 per cent of the stock it would have an investment in shares as well. They may have nothing left with which to apply the 40 per cent test, except 40 per cent of the paid-up capital of the parent company.

Senator Molson: Not the way I see it.

Mr. Humphrys: I think probably the desirable thing in applying the test in paragraph (a) of subsection (3) is that the ratio between invested assets other than the assets of the type described in (5) divided by the total assets.

Senator Molson: Well, I think it should be looked at.

The Chairman: Senator Molson, I have put the word "stands" after subsection (5), because I know what the intent was and we do not want to see the intent thwarted by the 40 per cent asset test so that you cannot benefit by the borrowing test. Remember, you are an exception, if not more than 40 per cent of your assets are in what are called investments; that is an exception. You have an exception under (3) as well, if the outstanding debt is not more than 25 per cent of the aggregate of the debt and the paid-up capital and surplus. So, it may be in the type of

company we were talking about that if you did not get the benefit under the 40 per cent, you might get it under the percentage of the borrowing in relation to the paid-up capital.

Senator Molson: To go from 40 to 25 per cent, in that case?

The Chairman: Yes.

Senator Molson: I am really not objecting; I am very far from clear.

The Chairman: I understand the problem, Mr. Humphrys does and Mr. Hugessen does, and I think we can put in a bit of language, as they say. So, we will let it stand.

Senator Connolly (Ottawa West): When Mr. Humphrys and Mr. Hugessen are formulating the new language, it would help if it were related to one of the investment holding companies who appeared before us here, like Massey-Ferguson, so we would see what the position was.

The Chairman: My recollection of the Massey-Ferguson evidence was that they financed their subsidiary companies, and I do not think they had borrowings. We have a consolidated statement here—but it does not seem to help.

Now we carry on at the bottom of page 3, with section 3 of the bill. There has been no change there?

Mr. Humphrys: This section was changed in recognition of cutting down the scope of ministerial discretion in the granting of exemptions, but subsection (3) of the original bill was deleted. I would like to suggest that it be restored because it gives a bit of protection to a company that was formed as an investment company but subsequently sought and received an exemption from the minister. We wanted to provide that to cover a company, in the future, the same text as for a company that was not of a type originally incorporated as an investment company.

Senator Connolly (Ottawa West): That is subsection (3) of the original bill you are now talking about?

Mr. Humphrys: Yes, I think it is the point of limiting the power of the minister to revoke an exemption once granted and, as such, it is protection for a company.

The Chairman: Subsection (3) should come back in, because in the second-last draft, when we had eliminated the 25 per cent asset

test, then we took subsection (3) out, but we have put not only the 25 per cent asset test but also the 40 per cent asset test, so subsection (3) should come back in.

Mr. Humphrys: Yes.

The Chairman: So, what you would do would be to—

Senator Connolly (Ottawa West):—put in subsection (3), and change the numbers of the rest.

The Chairman: Whether you make it subsection (5) or put it in its original position, as subsection (3), I do not suppose matters. Is that agreed?

Hon. Senators: Agreed.

The Chairman: Then you come to the top of page 4. This just carries through from the original bill; that is, that there must be a badge of the Letters Patent in relation to a company that is incorporated after the bill becomes law as an investment company, and we have not made any change there.

Hon. Senators: Carried.

The Chairman: In section 5 the original bill provided that:

Every investment company shall, within two months after the end of its fiscal year, file in the Department of Insurance
(a) a statement...
...etcetera. We have made that "one hundred and twenty days". There is no objection to that, Mr. Humphrys?

Mr. Humphrys: No.

Hon. Senators: Carried.

The Chairman: There is no objection to any part of section 5, is there?

Mr. Humphrys: There is a new paragraph (b) in section 5. The point there is really to provide an option, at the discretion of the Superintendent, either to prescribe a financial statement or to accept the financial statement the company submits to its annual meeting. My thought was that in practical terms we would probably follow the latter course, until such time as it seemed desirable to do otherwise.

However, I would like to add the words at the end of the fourth line—where it reads, "the financial position of the company placed before the annual meeting":

...placed or to be placed before the annual meeting of the shareholders following its last complete fiscal year.

My reason for that is that the 120-day period prescribed in the preamble might elapse before the company held its annual meeting, and we want the statement to be submitted to the meeting rather than the one submitted to the annual meeting a year ago.

Senator Connolly (Ottawa West): You have another element of protection by the fact that the type of auditing done must be done by people who are accredited auditors. That protects you too, I think.

Mr. Humphrys: Yes, very much.

The Chairman: I think a question was asked about whether the Superintendent only gets one report a year, and the answer was that he could call for other reports. We have provided in subsection (6), at the bottom of page 4, the design of the subsection to make it clear that the Superintendent may require interim statements, if necessary. That is all agreed?

Hon. Senators: Agreed.

Senator Molson: "Notice" does not need to be defined—"the Superintendent may, by notice. . ."—24 hours, 21 days, or just "notice"?

The Chairman: No—"at any time require it to submit to him forthwith. . ." I do not think you could interfere with that, because if he is looking for further statements than the regular statements, he must have a reason and, therefore, he wants the answer right away, and that is why we put it in in that form. It is adding more power to his arm to deal with situations.

On page 5, at the top of the page, we have deleted the former power in the original bill to question the auditor. The auditor, being the auditor for the shareholders, should not be subject to that, and we have not really interfered with the powers of the Superintendent in so doing. I understand you approve of that, Mr. Humphrys?

Mr. Humphrys: Yes, Mr. Chairman.

The Chairman: Then in subparagraph (h) we have provided for the qualifications of the auditor, and that is a usual thing.

Mr. Humphrys: I would like to suggest, in addition, the provision that a firm of accountants may be appointed as auditors, which is

not an uncommon practice now. I think this could be done by adding a paragraph to (8).

Senator Connolly (Ottawa West): As (d)?

Mr. Humphrys: No. I think the easiest way would be to make (a), (b) and (c) into subparagraphs and then add a paragraph (b) saying:

(b) A firm of accountants of which one or more members is qualified in accordance with paragraph (a).

Senator Connolly (Ottawa West): I do not get that.

Mr. Humphrys: The subsection would read:
The auditor of an investment company shall, at the time of this appointment, be
(a) an accountant who. . .

then (i) and put in the text of the present paragraph (a), (ii) and the text of the present paragraph (b), (iii) and the text of the present paragraph (b), and the word "or" would follow my revised subparagraph (iii). Paragraph (b) would read:

a firm of accountants of which one or more members is qualified in accordance with paragraph (a).

Senator Connolly (Ottawa West): It seems to me a long way to do it. Why not say, "shall be an accountant or a member of a firm of accountants"?

Mr. Humphrys: It becomes a little complicated, because you really cannot have a firm in good standing with an institute or association. Again you have to fall back on a member who is of good standing.

The Chairman: Would you like to go over that wording again?

Mr. Humphrys: It would read:

The auditor of an investment company shall, at the time of his appointment, be
(a) an accountant who

(i) is a member in good standing. . .

(ii) is ordinarily resident in Canada; and

(iii) has practiced his profession in Canada continuously during the six consecutive years immediately preceding his appointment; or

(b) a firm of accountants of which one or more members is qualified in accordance with paragraph (a).

Senator Burchill: What does paragraph (a) say?

Mr. Humphrys: The accountant must be ... a member in good standing of an institution or association of accountants incorporated by ... a province,

and must be ordinarily resident in Canada.

Senator Burchill: Does that mean a chartered accountant?

Mr. Humphrys: A chartered accountant would qualify, but there may be other recognized associations of accountants.

The Chairman: Is it agreed to make that change?

Hon. Senators: Agreed.

The Chairman: We have made changes to subsection (9), but there is no objection to that.

To subsection (10) there is no objection.

Senator Molson: I have a question on subsection (11). In view of the fact that an auditor has a duty to shareholders, is it proper to make the report to the chief executive officer and the directors and not to the shareholders? Has this been taken up with the Association of Chartered Accountants at any stage?

The Chairman: The directors from time to time ask the auditor for a special report. These are services apart from the services as the shareholders' auditor.

Mr. Humphrys: The provisions in the Corporations Act dealing with the audit would continue to apply, and in the normal course the auditor would have to report to the shareholders. This imposes an additional duty on him. These words are copied from the Bank Act.

The Chairman: If he is asked for a special report it should go to the shareholders.

Senator Molson: I am wondering if something should not go into his report to the shareholders, that is all.

Mr. Humphrys: I would see no objection to that.

Senator Molson: It seems to me it is the sort of thing the association should be asked about. I may be suggesting something awkward or cumbersome or difficult, but it is a question that naturally arises. When that is their prime duty, should they be making

comments about things affecting the well-being of the company that are not satisfactory and require rectification, and not mention to the shareholders that such a condition exists?

The Chairman: Subsection (11) says:

It is the duty of the auditor of an investment company to report in writing to the chief executive officer and the directors of the company any transactions or conditions affecting the well-being of the company that in his opinion are not satisfactory and require rectification; and the auditor shall, at the time any report under this subsection is transmitted to the chief executive officer and the directors of the company, furnish a copy thereof to the Minister.

If this subsection stays in its present form I do not think the provisions of the Canada Corporations Act will apply. Is not the auditor required to communicate with the shareholders in connection with any reports?

Mr. Hugessen: Only the annual report.

Senator Molson: Is there any objection to asking the association if this provision presents any problems?

The Chairman: No. It may well be, since this is providing a code for the administration of this act, that we should require in this subsection that a copy of any such report shall be forwarded to the shareholders.

Mr. Hugessen: The auditor has no facilities to forward a report to the shareholders.

Senator Molson: In the case of a big company that is a great undertaking, but I was wondering if a certificate at the end of the year should not mention these things.

The Chairman: The other side of the coin is that the position of the company at the time may be one that is being examined to see whether it is approaching difficulties, and whether that information should go out right away. I suppose under the disclosure proceedings in the Securities Act, certainly if your stock was listed on the exchange, you might have problems if there were material facts in the report and you did not disclose them.

Senator Molson: That is it.

Mr. Humphrys: There is a special feature here, of course, in that it requires a copy of the report to be submitted to the minister. Thus the supervising authority has knowledge

of it and is charged with the protection at least of the creditors and the well-being of the company.

Senator Molson: The creditors but not the shareholders. I still do not see any reason why there should be any reluctance to ask the Association of Chartered Accountants if this paragraph presents any problems.

The Chairman: You could put the onus on the minister by providing—

Senator Molson: That he should notify the shareholders?

The Chairman: Yes. After all, how can you ask the auditor to do it? You could ask the company.

Senator Molson: How can you ask the auditor to report to the minister then?

The Chairman: This is a statutory duty, and I expect Parliament could require any person to do any duty that it thinks should be done. Parliament is supreme in these things, you know.

Senator Molson: Yes, but I thought the whole object was to protect the public, and here we are saying that we will protect the creditors but that the shareholders do not matter.

The Chairman: Because this bill was designed for the protection of the creditors. Mr. Humphrys will tell you that there is nothing in the bill designed to deal with the shareholders as such.

Senator Molson: I still cannot accept that.

Mr. Humphrys: The auditor provisions of the Corporations Act are not changed, except that the qualifications of the auditor are raised, so whatever duties are imposed on the auditor by the Corporations Act would continue to apply.

The Chairman: I think that if a report were made by the auditor at the request of the minister and a copy goes to the directors, if there were some material facts in relation to the operation of the company in that report and nothing was done about that report, such as the directors vis-à-vis the shareholders, quite apart from this act it would create a very difficult situation for the directors. That is not something that comes under this act, but it is something which involves the duty of the directors. This is the problem you are

thinking about, and I agree that it is certainly the directors who would have to think about it in their duty as directors, not particularly because of this act. Having got information of a material source or kind then what is their duty? It exists quite apart from this bill.

Senator Molson: As long as it does not impose liability on the auditor.

The Chairman: No, it does not. He is told to do something and he does it and he gets paid for it.

Senator Connolly (Ottawa West): In a sense the report that is made by the auditor, when it is handed to the supervising authority, in this case the Superintendent of Insurance, I suppose is a measure of protection to the shareholder, because if there is something wrong the Superintendent will step in. It is in the interest of the shareholders that he should.

The Chairman: Yes, senator, it may be, but the question that Senator Molson was raising is a question that exists quite apart from anything in this bill. If information comes to the attention of the directors which is of some material significance in relation to the company and its operations, quite apart from this bill, what is the duty of the director?

Senator Molson: Is the auditor in default by informing the directors and not the shareholders who are really dependent on him for their protection?

The Chairman: That is something the auditor would have to determine as to what his responsibilities are under the Canada Corporations Act. I was discussing it from the point of view of the overriding duty of the directors.

Senator Benidickson: I have some sympathy for Senator Molson's point that the first people involved are shareholders. You then get to the public.

The Chairman: No, no, senator.

Mr. Humphrys: I think the prescription of auditing steps in this bill is something that is intended for the purpose, sought by this bill, to give a protection for the creditors. Now, the duties of the auditor vis-à-vis the shareholders I think are found in the Canada Corporations Act.

Senator Benidickson: I have an impression that the auditors and the directors are pretty chummy in some of these affairs.

The Chairman: I am not sure that I could accept that statement in its entirety. I would have the feeling that they are at arm's length.

Senator Benidickson: It should be that way.

The Chairman: And they are.

Senator Molson: Normally.

The Chairman: Normally, yes. There are problems at times.

Senator Molson: They should not be hostile. They should be at arm's length. They should be at a comfortable arm's length.

The Chairman: I was using the legal concept of arm's length.

Senator Molson: I am sorry, I was thinking in accountant's terms.

Mr. Humphrys: May I ask that it be approved in principle by adding a new subsection that would give the minister power to call for a special audit if he thinks it is required and appoint for that purpose an auditor who is qualified. I think there may be cases which rise in this heterogeneous field when an auditor is not appointed when he should be.

The Chairman: I do not see any. We would put it in as 12 and make No. 12, 13.

Mr. Humphrys: Yes, Mr. Chairman.

The Chairman: Is that agreed?

Hon. Senators: Agreed.

The Chairman: On 13 where money is borrowed, the:

investment company shall, prior to borrowing...file with the Superintendent in relation to such borrowing;

On the top of page 6:

(a) a prospectus which complies with the requirements of section 77 of the Canada Corporations Act; or

(b) a copy of any prospectus or document of a similar nature required to be filed with any public authority under the law of any province.

This is new. This is because we have substituted the words "use of proceeds" for "use of assets" in the definition of business of investment. Therefore it is important to the Superintendent to know how the proceeds have been applied. This is one way in which he can get the information. As you will recall,

earlier in the bill we also gave a presumption where the onus is on the borrower to satisfy the minister that the proceeds were used in such and such a direction. This is quite apart from this requirement of furnishing this information. Therefore, subsection 12 is changed to 13. Does that carry?

Senator Molson: We change 12 to 13. Where is section 12?

The Chairman: We are putting in a new 12 to cover the matter of special reports.

We come to section 6 on page 6 and there is no change there, Mr. Humphrys.

Mr. Humphrys: There is a small point on the question of jurisdiction. We were a little uncertain because in the latter part of the paragraph it provides that an inspector can look at the books, records or documents related to the business, finance and other affairs of the investment company or any subsidiary or subsidiaries that are maintained that could reasonably be expected to be maintained at that office. We thought perhaps that any subsidiary or subsidiaries should be confined to federally incorporated companies. We were a little dubious of our authority to make extracts from or inspect the books of a company that was not under federal jurisdiction. I was suggesting that, in place of any subsidiary or subsidiaries, the words be "of any company that is a subsidiary". It is a fine jurisdictional point, Mr. Chairman.

Senator Connolly (Ottawa West): Why do you not put it in the way you said it first, "federally incorporated subsidiary or subsidiaries"?

Mr. Humphrys: Company is defined as federally incorporated. I was going to say "of any company that is a subsidiary".

The Chairman: You say the affairs of an investment company or of any?

Mr. Humphrys: Any company that is a subsidiary thereof.

The Chairman: That is a subsidiary thereof. Carried?

Hon. Senators: Agreed.

The Chairman: Number 2 is all right, Mr. Humphrys?

Mr. Humphrys: Yes.

The Chairman: Is number 3 all right?

Mr. Humphrys: I have no comment.

The Chairman: We have added the word "knowingly" in subparagraph (b) of section 7. No person shall "knowingly make a false or misleading statement either orally or in writing ...", et cetera, to the inspector. Carried?

Hon. Senators: Carried.

The Chairman: Number 8, subsection 2 of No. 8 is new.

Senator Molson: Before we get to that, Mr. Chairman, I wonder if the implication is quite right that it is always the people involved in the business world who do things that they should not be doing. Is it not just as much in the public interest that investment companies should not do these things with people who are public servants and people who are directors? We always seemed to pick on the officers and directors of companies, but surely we do not want loans made to people who are in public life also. There is a situation there that would cause considerable embarrassment in society. Should they be excluded from any of these problems that crop up?

Mr. Humphrys: You are referring to the staff of the supervisory department?

Senator Molson: I was thinking much more generally, that anyone in the public sector ...

Senator Connolly (Ottawa West): Politicians, civil servants, or otherwise.

Senator Molson: Politicians and officials, I was thinking of.

Mr. Humphrys: The concept of this section 8 is to debar investments or loans to people who have or can reasonably be presumed to have any influence over the investing policy of the company. That is as far as it goes.

Senator Molson: I will not split that from the other group.

The Chairman: The other group you are talking about, Senator Molson. If there is an official in a department of Government the scope of whose duties would include investigation or inspecting operations of an investment company and he managed to get a loan from the company, he would certainly be treading very closely on the provisions of the Criminal Code about bribes, or he would be getting very close to it.

Senator Molson: I agree.

The Chairman: So you have something in the law today.

Senator Molson: There are some of these directors and officers getting very close to the law in some of the things they do and some of them have ended up behind bars. I am wondering if the minister, for example, is not as vulnerable as a director or officer. I do not know. I am asking.

All these things that come up in legislation, we seem to prevent the businessman from doing something nasty but we never seem to include any politician or official, and I think there are some occasions when it is more serious from the point of view of society if these things happen with a public person than with a businessman.

The Chairman: You are thinking of one offence, and the point you are trying to make is the getting of a loan or the making of a loan to such an official. But there are other ways in which that could occur.

If the official were negligent in the discharge of his duties, that would have to come in a different category.

This is dealing only with the matter of making loans or distributing the money of the investment company in certain directions. If you want a more general provision to write in a Criminal Code provision here with respect to anyone who has anything to do with or any duty to perform with respect to the operation of a company, if you want to make a broad sweep, we would need to look at a separate section.

Senator Connolly (Ottawa West): You may also consider the possibility of an auditor, for example, getting a loan.

Senator Molson: Or a lawyer, Mr. Chairman.

The Chairman: Your point is one we could look at, but it does not belong in section 8. Shall subsection (1) carry?

Senator Connolly (Ottawa West): Before you leave (1) it prohibits what are called pretty well the upstream loans. It allows collateral loans, the downstream loans. I wonder whether Mr. Humphrys would consider the addition at the end of the section of a provision that could allow the money of an investment company to be loaned to a parent which would guarantee the loan, provided that the parent had a net worth that was acceptable to the administrative authority.

I have raised this before in the subcommittee but unfortunately I had to be away from subsequent meetings of the subcommittee.

Mr. Humphrys: Senator Connolly, I think that kind of test puts the supervisor in a position where he has to form a judgment of whether it is a good loan or not in a financial sense, as well as whether the guarantor is financially able to pay the debt. So far in this legislation, this kind of investment judgment has not been required of the supervisor. I have hesitated to propose any situation where the investment judgment of the supervisor might be substituted for that of people who are in business.

The Chairman: No, but your investment judgment does come into play when you are studying the annual statement and the expenses, when you are making determination as to whether there is a deficiency.

Mr. Humphrys: In the broad sense, yes.

The Chairman: You are not approving the investment but coming up with a valuation of it at a later stage.

Mr. Humphrys: So I would hesitate to accept a plan such as Senator Connolly described.

Senator Connolly (Ottawa West): It may be invidious to mention names, but in the subcommittee we did talk about the position of Canadian C.P.I. I am not sure whether it was in the case of loans...

The Chairman: Senator, you are speaking too soon on that point. There are specific provisions later on, even on this page.

Senator Connolly (Ottawa West): Very well, I will wait.

The Chairman: If you would like in the meantime to read subsection (9) on page 8 and see whether it deals with what you are thinking about.

Senator Connolly (Ottawa West): I have read that.

The Chairman: On subsection (2), page 7, Mr. Humphrys, we have altered the provisions in the original bill. Have you any comment?

Mr. Humphrys: No, Mr. Chairman. The original bill prescribed the date that the bill was introduced as being the effective date of the prohibitions in this section.

Some time has gone by and I think it is reasonable to drop that date and make it applicable from the coming into force. It must be recognized that it leaves the way open for a company to make investments of this type prior to the coming into force, in anticipation, you might say, of the prohibition; but I am not raising any objection.

The Chairman: Is subsection (2) carried? I do not think we have made any changes there.

Subsection (4), there is no change.

Subsection (5), there is a change. If you look at subsection (5) on page 8 of the draft that you have before you and compare it with subsection (5) in the bill, you will see that we have produced a very short version of what is in subsection (5) of the bill. I understand Mr. Humphrys would like to have the full subsection restored.

Mr. Humphrys: And subsection (6) as well.

The Chairman: Will you tell me the reason why?

Mr. Humphrys: In our earlier discussions, Mr. Chairman, it was suggested that all subsection (2) be deleted. If all of subsection (2) were deleted, Mr. Chairman, then the old subsection (6) and the last part of the old subsection (5) could be dropped. But now subsection (2) has been retained with a change in date so that it is important to keep the old subsection (5) and subsection (6) as they were. They give added protection to a company and make it clear that the prohibition against holding investments does not apply, if they made these investments at a time when they had a specific exemption from the minister.

Mr. Hugesson: Mr. Chairman, would it meet the requirement, if we were simply to change the wording of subsection (2) very slightly so as not to refer in the last words there to an investment described in subsection (1) but simply to an investment which is prohibited by this section? Then, if the minister had exempted the investment, the company would be off the hook. Would that meet your point, Mr. Humphrys?

Mr. Humphrys: Actually, the prohibition in section 8, is against knowingly making investments that are of the type described, and the purpose of my request that subsection (2) be restored was that, if a company had made an investment of a type described in subsection

(1), but had done so unknowingly, then, when we brought it to their knowledge the purpose of subsection (2) would be to require them to dispose of it.

So we cannot define positively investments that are prohibited by the section because of the presence of the word "knowingly".

The Chairman: Having regard to the changes we have made, there may be some value in putting subsections (5) and (6) back in.

Mr. Humphrys: You would drop the existing subsection (5) and replace it by (5) and (6) in the original bill.

Senator Connolly (Ottawa West): Would you then leave in subsection (2) in the draft?

Mr. Humphrys: Yes.

The Chairman: So we put in the old subsections (5) and (6) of the original bill and renumber the clauses accordingly. Is there any other comment on that?

Mr. Humphrys: Yes, Mr. Chairman. In the old subsection (7), which we have just renumbered as (8), this wording is the same as was in the original bill to amend the Canadian British Insurance Companies Act, the Trust Companies Act and the Loan Companies Act. Honourable senators may recall that when the bill was before the committee we proposed an amendment, and I would like to ask for approval of changing this section to make it identical with the wording of the corresponding section as the committee amended it in the other bills.

The Chairman: I may say that it has the effect of permitting downstream investments by an investment company provided that its directors, officers and substantial shareholders do not have a significant interest in the subsidiary concerned, other than through the investment company. That is the purpose of it and it is the same as the purpose in the bills dealing with the insurance companies, trust companies and loan companies. As the language did not appear to accomplish what it was intended to do in those bills, we made an amendment in committee. I understand that Mr. Humphrys now suggests that the form of that amendment in other bills be the form that we use here in this paragraph renumbered as No. (8).

Mr. Humphrys: Yes.

The Chairman: Do you have the wording of that handy?

Mr. Humphrys: Yes, the new subsection (8) will read as follows:

Notwithstanding subsection (7), an investment company is not prohibited from making an investment in a corporation only because a person or a group of persons that owns beneficially, directly or indirectly, or is deemed to own beneficially, equity shares of the investment company is by reason thereof deemed to own beneficially equity shares of the corporation.

The Chairman: Is that agreed?

Hon. Senators: Agreed.

The Chairman: Now we come to the new section No. 9 which is formerly 8. This is designed to allow take-over bids which could otherwise be frustrated by the biddee requiring 10 per cent of the shares of the bidder. What we say there is that:

Notwithstanding any other provision of this section, an investment company is not prohibited from acquiring and holding equity shares of a corporation that it acquires pursuant to an offer for all or a majority of the outstanding equity shares of such corporation, if at the time the offer was made by the investment company, it was not prohibited from investing in such shares.

Shall it carry?

Hon. Senators: Carried.

The Chairman: Then we come to subsection (9) which becomes (10) and which is designed to provide relief for subsidiaries such as C.P.S. provided that the parent company guarantees the loans and complies with the reporting provisions of the Act. So we are right on the point that you asked about a little while ago, Senator Connolly.

Senator Connolly (Ottawa West): Perhaps to speak about a specific company such as you mentioned, Mr. Chairman, is rather invidious.

The Chairman: But this is drawn generally to cover all types of cases.

Senator Connolly (Ottawa West): Where a parent company has a net worth equal to the borrowings or perhaps 50 per cent of the borrowings, would that not be sufficient assur-

ance to the public as well as to the supervising authority rather than proceeding in the manner described on the new clause (10)?

The Chairman: This is what is proposed. We say:

"Notwithstanding any other provision of this section, an investment company may, unless it is prohibited from doing so by a condition in its certificate of registry, make and hold an investment in any corporation that a parent corporation of the investment company would not, if such parent corporations were an investment company, be by this section, prohibited from making provided that:"—

This is to overcome a prohibition that occurs elsewhere in the bill.

Mr. Humphrys: And the parent company need not be an investment company by paragraph (b). If the parent company is not an investment company, it must comply with the procedure as outlined here to enable us to get a financial statement and to inspect it so that we can judge whether its guarantee is worth anything. The reason for this is that we considered that there might be cases where a parent company is a foreign company or is a company in such a state that its guarantee is worth nothing. We would need a way of preventing this exemption from being used in a manner in which it should not be used. But any such prohibition would have to be in terms of the condition of the certificate and not in terms of an *ad hoc* decision by the Minister.

Senator Connolly (Ottawa West): Then in the case of an investment company like C.P.I. where it should make a loan to a parent company such as C.P.R., perhaps, what you would do is look at the balance sheet of the parent and see whether the guarantee provided is a proper guarantee.

Mr. Humphrys: Yes, we would try to look at it as if it were a case where the parent company had done the borrowing directly.

Senator Connolly (Ottawa West): If it does the borrowing directly, it becomes an investment company, whereas if it borrows through a subsidiary the question of the guarantee comes in.

The Chairman: As you know, this is a practice that seems to have developed; where you have a series of companies carrying on different operations, you have intruded somewhere

along the line a company that is really the financial arm of the operation. This sort of thing would come under the prohibition in the bill if you did not have a provision of this kind in this new subsection (10) where we permit it under the conditions described, requiring of course the guarantee of the parent company to support the borrowing. The reason for that is that the people who would buy the offerings of the financing subsidiary could say "oh, well, that is a subsidiary of such and such a company, and that is a wonderful company" and then they would go ahead and buy, while in fact it may not be such a wonderful company after all. The idea is that if you go ahead and do this you have to have the guarantee of the parent company. Secondly, it puts the superintendent in a position under the law where he can get at the financial statement of the parent company and see whether the guarantee is worth anything or not. That is what the wording is intended to get at.

Senator Kinley: There is no guarantee for a trust company in this?

The Chairman: This is not intended to guarantee the creditors that their investment will remain at 100 per cent value all the time. It is only intended for the purpose of protecting creditors against practices that may lead to the dissipation of their investment.

Senator Kinley: Are they allowed to take deposits?

The Chairman: No.

Senator Kinley: But what about a trust company?

The Chairman: This is not a bill dealing with trust companies. Trust companies have nothing to do with this bill.

Senator Kinley: But in a trust company the government guarantees \$20,000.

The Chairman: Senators, this bill does not concern trust companies.

Senator Kinley: But trust companies have subsidiaries who carry on investment, don't they?

The Chairman: For the purposes of this bill, I do not know. A trust company is not an investment company under this bill. It has its own scrutiny provisions and protective provisions and everything else under separate legislation and so it does not come under this bill at all.

Now on top of page 9 we have new clause (11) which used to be clause (10). Have you any comment to make on that, Mr. Humphrys?

Mr. Humphrys: I would like to insert the words "or is deemed to own" after the word "owns" in the third line. Then it will read "...company if the corporation owns or is deemed to own beneficially ..."

The Chairman: All right; it is now approaching 1 o'clock and we have reached this new clause (11) at the top of page 9. We will continue this at another time. We still have two other bills to consider, one dealing with export trade and the other with income tax. I have organized and made available for us a room where we can meet this evening at 8.30 and I suggest that at that time we should proceed with consideration of the income tax bill. The life insurance companies representatives are in town today and would like to be heard, and we should try to accommodate them. I have also arranged for the necessary accommodation for tomorrow morning at 9.30 so that we can continue consideration of this bill, and also the income tax bill, in the hope that we will complete consideration of them by the time we adjourn sometime tomorrow.

Senator Croll: That is very nice, but we do not arrange meetings to conflict with meetings of this committee. We give you a free run on Wednesday. But we have other meetings arranged that have already been arranged for a long time. There are three or four senators here who are also members of that other committee and tomorrow morning we have witnesses coming from some distances. It may be rather embarrassing in that you may not have a quorum and we may not have a quorum. I think the meeting should be arranged in such a way that we do not conflict with meetings that have been previously arranged.

The Chairman: In making these arrangements the object was not to conflict with anybody else, but the object was that we are pushing against a deadline of June 27, and we should get as much of the work done this week as we can.

Senator Croll: But that exports bill went to committee; I do not know why it did, because there is total agreement on it.

The Chairman: That will not take long.

Senator Croll: You could do that between 1 and 2 p.m. tomorrow, in no time.

The Chairman: We still have the income tax bill and we still have to finish this one.

Senator Croll: Do you not think you could pass the income tax bill tonight?

The Chairman: I do not think we will, but we will make a hole in it; and for the same purpose I am suggesting we sit tonight, as you are suggesting you should have a clear run tomorrow. That is, there are certain people who have requested to be heard and they are available in town today and, rather than send them away and have them come back another time, I said we will hear them this evening.

Senator Kinley: They were waiting in the hall this morning and asked me about it.

The Chairman: In any event, if we have a quorum this evening we will go ahead. If we do not, we will not, and we will face tomorrow morning when we meet this evening.

Senator Connolly (Ottawa West): When do you propose to take the export bill?

The Chairman: This evening.

Senator Connolly (Ottawa West): Is it first?

The Chairman: Yes, and it will take only a few minutes.

Senator Benidickson: I did not quite understand. Are we sitting tonight or this afternoon?

The Chairman: The Senate is sitting this afternoon, so we cannot sit this afternoon. Therefore, we are sitting tonight.

The committee adjourned until 8.30 p.m.

Ottawa, Thursday, June 19, 1969

The Standing Senate Committee on Banking, Trade and Commerce, met this day at 9.30 a.m. to give further consideration to Bill S-17.

Senator Salter A. Hayden (Chairman) in the Chair.

The Chairman: I now call the meeting to order. You will recall yesterday that we had proceeded as far as section 9 on page 9 of the bill and we had left behind, in the consideration of the earlier sections, certain questions of drafting in order to reflect the views of the committee. I suggest that we carry on through the bill and come back and pick up all the drafting.

Hon. Senators: Agreed.

The Chairman: There is nothing here which is against the original bill before us. I just had distributed to you a revised draft for the first part of the bill. Have you got your original one you had yesterday? That is the one you should keep following for the moment.

Senator Hollett: Keep the original one?

The Chairman: Look at that one and we will come to the revised one afterwards. In section 9 there is no change as against the original bill.

Senator Molson: In connection with letters patent:

shall not be issued under any Act of the Parliament of Canada to incorporate a company. . for the purpose of carrying on the business of investment without the consent of the Minister;

That was there originally?

The Chairman: Yes. Does that carry?

Hon. senators: Carried.

Mr. R. Humphrys, Superintendent of Insurance: This is not exclusively specialized.

The Chairman: There is no change in section 10?

Mr. James H. Hugessen, Special Counsel to the Committee: There is one small drafting change which we effected from the draft distributed yesterday and the one distributed today. It is consequential to some of the changes made yesterday in subparagraph 5 after the word "shall" in the second line. You will observe in the new draft that it contains the word "notwithstanding subsection (3) of section (2)..." That is to say, a registered company is an investment company while it is registered even though it might be exempt under the provisions of subsection (3) of section 2.

Mr. Humphrys: Could you possibly stand section 10 and look at section 11? I would like to make some comments on two of them, because they deal with the issuance of the certificate of registry and the period of time in which a company must apply.

The Chairman: Without passing clause 10, we will let it stand and go into clause 11, which starts at the bottom of page 9.

Mr. Hugessen: There is a drafting change in this, too, simply as a result of a typographical error, in the version distributed yesterday.

By error, a subparagraph became dropped and it appears at the top of page 10 in today's new draft as being paragraph (b) of subclause (2). This is simply a typographical error, it is simply to provide for a time limit during which a company which becomes an investment company after the coming into force of the act must apply for registration. It was in the original draft of S-17 but by this typographical error it was left out.

The Chairman: So the (b) which you are putting in would be "one hundred and twenty days after the end of the year in which it became an investment company".

Mr. Hugessen: That is correct.

Mr. Humphrys: After the...

The Chairman: After the end.

Mr. Humphrys: "After the end of the fiscal year of the company in which it became an investment company." I think the words "fiscal year of the company" are necessary, otherwise the year might be a calendar year and might not necessarily correspond to the fiscal year of the company.

Senator Phillips (Rigaud): You introduce "fiscal" and "of the company".

The Chairman: As to the content of clause 11, apart from the question that you wanted to discuss about the certificate of registration, Mr. Humphrys, is there any other point?

Senator Connolly (Ottawa West): I take it there has been no other change?

Mr. Humphrys: Yes, there is a change. The six month period prescribed is different from that of the original bill. No, Mr. Chairman, the comments I wish to make have to do with the issuance of the certificate and with the time limits.

The Chairman: All right. So this is in relation to both clauses 10 and 11. You notice the registration under the original bill was postponed for two years, the same as the sanctions. We felt that everything should come into force at the same time, even the registration, and that is why we made the change. Mr. Humphrys explanation at the time, when we dealt with it in committee, was that he felt he required a considerable gap, to sift all the returns which were required. But the view of the subcommittee was that they had better get down to their business right away. That is why we have provided, as we have,

that the period within which the application for a certificate of registration must be made, that is, within six months after the coming into force of the act, or within 120 days after the end of the fiscal year of the company in which it became an investment company.

There is the point of difference—to be or not to be, within six months you must register, or within a period of two years, as provided in the original bill.

Now, Mr. Humphrys, you have the floor.

Mr. Humphrys: Mr. Chairman and honourable senators, as I mentioned briefly yesterday, the concept in the original bill was to bring into force the reporting and inspecting techniques at once, as soon as the bill was proclaimed, but to delay the issuance of certificates of registration and the sanctions for a period of at least two years thereafter.

The basis of that, as the chairman has just explained, was that it was considered that the group of companies that would be covered by this bill would likely be quite heterogeneous. It would take some time to obtain statements from them, make a study of them, and have the administrative staff become knowledgeable to the extent that they could advise the minister whether to issue or refuse to issue a certificate; so we could take responsibility of invoking sanctions and forming a judgment as to whether a company was in a position to meet its obligations or not.

It was for that reason that a period of delay was proposed. It was recognized that it created some problems because the situation could arise where the information was in the possession of the supervisory authority but without his having clear authority to do anything about it. This was not or would not be a comfortable situation.

A judgment had to be made between the two possibilities. As the chairman has indicated, the subcommittee thought that the importance of having authority, clear authority to act in a difficult or dangerous situation, was more important than the concept of allowing a period for the supervisory staff to become thoroughly acquainted with the companies.

The proposal before you, therefore, requires a company to apply for a certificate of registration within six months after the coming into force of this act or within 120 days of the end of its fiscal year during which it became an investment company.

Senator Connolly (Ottawa West): Where is that provided, Mr. Humphrys?

The Chairman: On the top of page 10.

Mr. Humphrys: The words "whichever is later", incidentally, should be added after (a) and (b).

Senator Phillips (Rigaud): The words "whichever is later" are in there.

Mr. Humphrys: The situation in the draft before you is that companies are required to apply for a certificate within the time they are specified and penalties are provided and certain consequences follow if they do not make application.

The act does not specify the time within which a company must be registered. The obligation is on the company to apply, it is sent up to the minister, and the staff advising him, to process the applications and get on with the decision as quickly as they can.

I do not wish this morning to raise any further points in connection with the coming into force of sanctions, to take action where a company is found to be in a weak or dangerous financial position.

In connection with the issuance of certificates of registry, however, I believe there would be some advantage in providing some delay in the issuance of certificates, for this reason. I do not think that it would be possible to make immediate decisions on all the companies that would be subject to the act and may apply. Some period of time is going to be required to process the applications and to deal with the situation company by company. How long it would take I do not know.

I thought there would be something undesirable in having applications in, and having no certificates issued for a long period of time, without a clear indication as to why the certificate is not issued.

For example, a company might apply very promptly after the coming into force of the act. Many might apply. We may be processing several hundred. Two, three, six, eight months might go by. A company might wish to arrange an issue with its underwriters and they might say "have you registered" and the reply might be "no, but we have applied." Then the underwriters might ask "have you got a certificate" and the reply would be "no." The underwriters would inquire "why not" and the company would have to reply "we do not know". The underwriters would then have to surmise: "Is it because the administration have all gone on holidays, or because there is something wrong with you,

that they have not made a decision; this company over here got a certificate, why haven't you?"

Now, the reason why the other company had got its certificate might be because they were on top of the pile and these other people were not. I thought that it would clear doubts in that regard if the bill provided—even letting stand the provisions for application for a certificate and the provisions for sanctions if a company is found to be in a bad position—that no certificate would be issued for a period of time, so that no one need feel, then, that if they have applied and if they have not got a certificate, that the lack of a certificate casts some shade or doubt on them.

We should wish to be in a position, and we sought to be in a position, to be able to process the applications and issue the certificates really all at once or as close to one moment of time as we could so that there would be no advantage or disadvantage as between one company, who had its certificate, and another company, who was still waiting for its certificate.

For that reason, I would like to suggest for your consideration the addition of a subsection to subsection (10) which would provide that the minister would not issue any certificate of registry pursuant to this section prior to the expiration of a specified period of time following the coming into force of the act. I would say we should have at least a year, because that would give us time to have a full year's financial statement of every company that had applied and that was subject to the act.

The Chairman: You realize what you are doing, if you put that in? You are creating a vacuum for the period of a year within which the company would not be able to finance, because an underwriter would want to know whether the company was subject to the provisions of this bill and, if it was, it would want to see the certificate.

Mr. Humphrys: I think, Mr. Chairman, I accept that point. But the point I was making is that we would not be able to make the decisions on certificates of registry promptly as the applications came in in the initial period and I thought it might be an advantage to all the companies concerned, if they were all in the same position that they could say to their underwriter, "We have applied. The fact that we have not got a certificate is not a reflection on us because nobody has got one

and nobody will get one before a certain date."

Senator Connolly (Ottawa West): Does it create any hardship to require a company to file an application for a certificate within six months? Could they all do that?

Mr. Humphrys: In our original thinking we proposed to give them a longer period.

Senator Connolly (Ottawa West): Two years, yes.

Mr. Humphrys: This is much tighter. I don't think I could say to you that it is not possible for companies to examine the requirements of the act and decide whether they should or should not apply.

The Chairman: Senator Connolly, this thought occurs to me, and perhaps it is an answer. If we put a subsection in providing that, if you produce evidence of having applied for registration, that is evidence of compliance with the act for such and such a period, would that not be the answer?

Senator Leonard: He has that power now, has he not?

The Chairman: If I apply, the certificate of registry is what I need in order to do borrowing and all that sort of thing, but what I thought was that, if the fact that I have made an application for registration is deemed to be compliance with the requirements of the act for such and such a period, then I could go ahead and do my borrowing.

Senator Burchill: But does merely applying mean that you are going to get the certificate?

The Chairman: No.

Senator Burchill: Well, that is the point.

Senator Molson: Would an interim certificate of sorts not be better?

The Chairman: What do you think of that, Mr. Humphrys?

Mr. Humphrys: I don't think it would be an appropriate procedure to issue interim certificates, because there might be companies that were not in good shape and it would be quite wrong to give them any standing, even an interim standing that a Government certificate or a ministerial certificate would give.

Senator Molson: I am just wondering, if they were in really poor shape at that stage,

would it not be sufficiently evident that they would not get the interim certificate?

Mr. Humphrys: It would, if we could process it, but, if we get 150 applications the month after this act comes into force, we just cannot deal with them within a matter of weeks. Some of them may be very large, complex companies. We feel very strongly that the issuance of a certificate under this act should mean something. It should be on the basis of an intelligent appraisal. The holding of a certificate must have some significance, otherwise the whole purpose of the act is weakened.

Senator Connolly (Ottawa West): From a practical point of view, you say here that they apply within six months. Nobody can say, no matter who has intimate knowledge of the industry, how quickly the applications can be made. Some may come in very quickly. Some others may not come in until the end of the six month period. Now Mr. Humphrys appears to be saying that it may take him a year. So that in fact it may take him a year and a half to get the certificates out after the coming into force of the act.

Mr. Humphrys: It is possible. I was asking for at least a year after the coming into force of the act, which would give us six months after the final day for filing an application so that, if the companies all waited until the last day, we would have then at least six months before anybody need expect a certificate.

The Chairman: There are two things dealing with that, Mr. Humphrys. One is that the application that is made for registration is in the form that you are going to prescribe under the act and you may specify the material you want in that application. That is one point. In section 10, in the opening paragraph, the minister, on application to him, may issue a certificate of registry to the company for such term, not exceeding one year, as he considers appropriate. Now, he can issue it with conditions. If the pressure of time is presenting the obstacle, he can issue certificates for a short period to meet the special cases.

Mr. Humphrys: The problem that concerns me, Mr. Chairman, is that, if we get several hundred applications, we just won't get through them all to make even an interim decision, and I would not want to issue any certificates, interim or otherwise, blindly.

Senator Leonard: There might be companies who would not wish to borrow within a period of six months or to increase their borrowings, and for them there might be a certificate issued for a term of six months, and those really under pressure would have to apply to have their applications heard forthwith.

The Chairman: That would split them into two piles.

Mr. Humphrys: It might do, sir, except that the companies that are in bad shape probably would not be borrowing anyway. There might be some action that should be taken right away, even if they go to the market to try to borrow money within a few months. The way the bill is set up now, applying for a certificate is in compliance with the act. This is the only obligation put upon a company. So long as it has applied, then it is free from the other penalties.

The Chairman: Yes, but it still cannot borrow until it has the certificate.

Senator Beaubien: Oh, yes, it could.

The Chairman: No, it could not.

Mr. Humphrys: It is only the companies that are formed after the coming into force of this act primarily for the purpose of carrying on a business of investment that are prohibited from borrowing until they are registered. There is no prohibition on companies now existing, as the act is drawn up, if they apply within the period.

The Chairman: In section 12 the prohibition against borrowing is in relation to new companies.

Senator Phillips (Rigaud): But there are bodies existing now for the protection of borrowers in so far as existing companies are concerned. You have the exchanges and the securities commissions in Quebec and Ontario and other provinces. I do not think that the existing companies that go to the public would be required by the underwriters to get a clearance on an application for registry as long as they have filed their application.

The Chairman: Senator Phillips, part of the answer is this if the company applies for registration and there is a company carrying on the business of investment at the time this act comes into force, they have complied by making an application and can then carry on as it did in the past.

Senator Phillips (Rigaud): That is my point. But Superintendent Humphrys is worried because they have to get a clearance, and I do not think that is so because there are organisations already existing through whom you have to get that clearance.

Senator Leonard: Mr. Humphrys, you have the same with existing companies, but with respect to new applications would it not be desirable to be able to process them a little faster.

Mr. Humphrys: Yes, but the only point I was raising was in connection with the introduction of the act, and for a period of a year after the introduction. Once this has elapsed, then prompt action would be expected and would be the order of the day.

The Chairman: I think we have to make a decision and cut right through something or other. If there are problems, well, Parliament seems to be sitting all the time now, pretty well, and appropriate changes can be made. But this thing has to mean something, and if you postpone registration for a year, what is the situation then?

Senator Leonard: The Minister is not obligated.

Mr. Humphrys: My point is that it would be prescribed that he shall not issue the certificate to anyone until after the expiration of one year.

Senator Hollett: Would not six months be a lot better for everybody rather than a year?

The Chairman: It seemed to the sub-committee that six months was a reasonable period of time in which to make an application.

Senator Connolly (Ottawa West): Would this make any sense? A six-month period, I think, has a lot of advantages but I can see Mr. Humphrys' position. Could you perhaps provide for a letter of acknowledgement that would tide the situation over, say, for another six months?

The Chairman: No. We just discussed that point while you were out. A company now carrying on business as an investment company at the time this bill becomes law can apply for registration, and having done that it has complied with the act. Then it can carry on its business whether it has the actual certificate or not. But a new company that is incorporated after the coming into force of

this act cannot carry on business in the sense of borrowing money until it has a certificate.

Senator Leonard: So, Mr. Humphrys, your suggestion is confined to existing companies?

Mr. Humphrys: Yes.

Senator Leonard: I think it is perfectly all right to adopt Mr. Humphrys' suggestion. He has a period of one year in respect to issuing certificates as to existing companies and they can carry on in that year in any event. So far as new companies who want to start borrowing are concerned, I am sure they will be processed as quickly as possible.

Senator Connolly (Ottawa West): They have to expect a certain amount of delay in any event.

The Chairman: I understood you to say that the position was that you wanted the Minister to have the authority that he need not issue a certificate of registration for a period within a year.

Mr. Humphrys: For a year after coming into force of this act.

Senator Leonard: I understood you modified that to confine it to existing companies.

Mr. Humphrys: I will be happy to do that. I see no problem about a new company because you know its financial position when it starts.

The Chairman: Under this draft the moment an existing company applies, it does all it is obliged to do no matter when the certificate is issued.

Senator Leonard: Mr. Humphrys does not want to be in the position where there is a problem about issuing a certificate for one company and being held up for a year in issuing one for another company. Would this not be the situation? You would know certain companies by reputation to be in a pretty good position and perhaps you could defer their certificates or even issue an interim certificate.

The Chairman: But it does not matter in relation to an existing company. It does not interfere with the operation of the company.

Senator Connolly (Ottawa West): But if you have not got your certificate, somebody can say "why have you not got your certificate?"

That might be a serious situation for a company to find itself in—where a certificate is issued to one company and not to another.

Mr. Humphrys: If that was the only point bothering me, as the bill is drafted and if it is accepted in this way all we can do is to look through the applications as best we can, but we want to deal with them in some orderly way, probably in the order in which they are submitted. The result of this would be that in fact some companies might have a certificate while other companies might not and they might say "why haven't I got a certificate?" One would not know whether it was a company that needed more investigation or simply a company that was late in filing. For this reason our suggestion was that if nobody need expect a certificate until a certain time after, this kind of comparison would not be drawn.

Senator Leonard: I think we should adopt Mr. Humphrys' suggestion. It is purely administrative and makes it easier for him.

The Chairman: It does not make it any easier for him. He has all the time in the world to issue a certificate.

Senator Leonard: Except that he may be flooded with telephone calls and inquiries as to why certificates have been held up.

The Chairman: He can put a note on the application forms saying "applications will be dealt with in the order they are received".

Senator Aseltine: I have a lot of sympathy for Mr. Humphrys in this although there are some things I do not agree with.

Mr. Humphrys: I think the Chairman is correct. While we would go ahead and proceed as quickly as we could the problem could arise among different companies and could cause comparisons as to why company 'A' got a certificate in June and another company did not get a certificate until July.

Senator Leonard: Have you something drafted, Mr. Humphrys?

Mr. Humphrys: The only suggestion I have would be a subsection to Section 10, that we provide the minister shall not issue a certificate for a period of time after the coming into force of this act; but I have not any wording to distinguish between the existing company and the new one.

Senator Leonard: Where the application comes from a company that was in existence

as of the date of the coming into force of this act?

The Chairman: They cannot do business until they do get a certificate. Mr. Humphrys says that he is not worried about that.

Senator Leonard: No, "that was in existence". In other words, his suggestion is that in respect of companies doing business at the time of the coming into force of this act, he wants to be free not to issue any certificate to them for one year, because they can carry on.

The Chairman: But there is no obligation. The existing company complies with the act if it makes application; it carries on business the same as it was carrying on business before.

Senator Leonard: Except they are going to be bothering him with, "When am I going to get my certificate?"

The Chairman: I have not any desire to make Mr. Humphrys' position uncomfortable. I am sure that he has had to deal with situations like this before.

Senator Connolly (Ottawa West): But it will be.

Senator Leonard: Yes, I think it will be. I do not think that he is going to have 150 a month, but many more.

The Chairman: What is the view of the committee?

Senator Connolly (Ottawa West): Do not ask us to vote on this; you make the decision!

The Chairman: We went through all this in our subcommittee and, on balance, we felt it may be a company problem, but the existing companies can carry on without the certificate; and if there are company jealousies that develop because one has a certificate earlier than another, I think that has to be faced.

Senator Connolly (Ottawa West): There are certain companies that are in good shape, and it would not hurt them too much.

Senator Beaubien: Mr. Humphrys has perfect leeway to work it out, and if does not issue any for a year, that is up to him. I am sure you use a lot of diplomacy and good sense.

Senator Phillips (Rigaud): If a company went to the public, and I were the lawyer for that company, I would go to Mr. Humphrys

and try my blandishments on him and say, "I need a certificate."

The Chairman: And with your blandishments, I am sure you would be successful.

Shall that section carry?

Hon. Senators: Carried.

The Chairman: Section 11, starting at the bottom of page 9, as we amended it this morning, shall that carry?

Hon. Senators: Carried.

The Chairman: Section 12. Are there any questions there, Mr. Humphrys?

Mr. Humphrys: I have one point there that I would like to put before the committee for consideration. Section 12 is the section that indicates that a company shall not increase its indebtedness if it has not applied for a certificate within the specified time.

Senator Connolly (Ottawa West): It says more than that.

Mr. Humphrys: Amongst other things, but this is the point I wish to make, that in subsection (4) there is a specific liability placed upon the directors. It says:

Where any money has been borrowed by an investment company in violation of subsection (1) or (2), the persons who were directors of the company at the time money was so borrowed are jointly and severally liable to the creditors of the company, as guarantors.

Referring to subsection (2) of section 12, subsection (2) says that:

(2) Where

(a) ...in the case of an... company to which subsection (1) of section 11 does not apply,

—that means an existing company—

the company fails to make application to the Minister for a certificate of registry within the time provided...

(b) notice of a special report made by the Superintendent under subsection (1) of section 13 is given to the company... or

(c) the certificate of registry

(i) of a company is withdrawn pursuant to section 15, or

(ii) ...has lapsed...

—the company shall not borrow.

My suggestion is that the penalty in subsection (4) on the directors or the liability, be confined to borrowing in violation of paragraphs (b) and (c) of subsection (2). I make that suggestion because there may be cases where companies acting in good faith may not know that they have become an investment company and, consequently, were obligated to apply, because the tests that we discussed yesterday, the proportion of assets and the proportion of liabilities, they are fixed really at any time during the current financial year or the preceding financial year, so that if you are close to the margin, one would have to have a day-by-day test to be sure. So that, even acting in good faith, there may be cases where they should have become an investment company and applied, but did not, and subsequently died out of the picture.

The Chairman: You are suggesting that in subsection (4), at the bottom of page 10, we strike out the words, "(1) or" so that it is "subsection (2) (b) or (c)".

Mr. Humphrys: Subsection (1) or paragraph (b) or (c) of subsection (2).

Senator Phillips (Rigaud): Should there not be a clarification as to what creditors we are speaking of? Are we speaking of creditors at the time of the faulty borrowing, and should there not be a statute of limitation related thereto? A company has its ups and downs and then, years later, somebody might uncover a defective borrowing, and the then directors, who may not be directors in the subsequent period, would be facing a lawsuit.

The Chairman: Would it not be if you limit it to the loans?

Mr. Humphrys: If you look over the page, the directors are jointly and severally liable: (a) in the case of a violation of subsection (1); and, (b) in the case of a violation of subsection (2). I would read:

...paragraph (b) or (c) of subsection (2), for the amount by which the indebtedness of the company was increased by borrowing.

Senator Phillips (Rigaud): But is it the creditors at the time of the borrowing or the creditors at any time? That definition indicates the amount for which they may be liable jointly and severally, but it does not indicate the category in terms of timing.

The Chairman: It is the director of the company at the time the money was so borrowed.

Senator Phillips (Rigaud): But I am speaking of this, should there not be a statute of limitation in respect of such liability? In other words, are they exposed ten years hence?

Senator Beaubien: Say a company had a bond for 20 years and they defaulted, at the time the directors entered into it the company may have been perfectly solvent, but the company might not be later.

Mr. Humphrys: If the changes are accepted, the only kind of borrowing which would be in violation would be borrowing after the Superintendent has made a report to the minister concerning the position of the company and notice of that report has been given to the company. This would be a serious matter, and a matter the directors could be expected to and should know about. So, if they nevertheless went ahead and borrowed, in spite of that, then the proposal here is that they should remain liable for the amount that was borrowed, and it would be limited to the directors who were directors of the company at the time that the money was borrowed.

Senator Phillips (Rigaud): The point I am making is that they should be called to account within a specified period, and that there should not be a continuing liability *ad infinitum*.

Mr. Humphrys: Should it not run for the duration of the instrument of indebtedness?

Senator Phillips (Rigaud): No, I do not think so. Take, for instance, an ordinary criminal offence. The Criminal Code provides in many cases for the charge to be laid within a specified period of time.

The Chairman: What you are saying, then, Senator Phillips, is that any action for a claim based on this section must be commenced within a period of so many years?

Senator Phillips (Rigaud): I am not saying that it should be six months, but...

The Chairman: Five years?

Senator Phillips (Rigaud): Yes, five years.

Senator Leonard: But would not the ordinary rule of limitations apply?

Senator Phillips (Rigaud): I do not think so.

Mr. Hugessen: I would suggest, Senator Phillips, that you have a problem here,

because you might have a borrowing in respect of which the directors might be clearly acting in bad faith. They have notice that the Superintendent has made a special report, but they nonetheless go ahead with the borrowing, and then the company may have managed to keep up with its borrowing and not fall into default until the sixth year, at which time the creditors are left in the cold.

The Chairman: Suppose we take out the words "as guarantors"?

Mr. Hugessen: It will be the same.

The Chairman: You are creating an indemnity when you say "as guarantors", are you not?

Senator Flynn: Perhaps the solution in a case like that would be to give the lender or the creditor the right to claim an immediate refund. If it is done, then it is done with the knowledge of the directors, and this default would give the creditors the right to claim reimbursement immediately.

Mr. Humphrys: If they knew about it, senator. The person who bought the debenture on the market would not necessarily know what has happened, and would not know that he should ask for his money back. In respect of Senator Phillips' question, if a company has survived five years without going into default, is it safe enough?

Senator Phillips: Yes, that is the point, but there is the question of this continuing on *ad infinitum*. These men should know that they are liable, if they are. There are people who get themselves elected to boards of directors and get themselves into trouble.

Senator Flynn: If the borrowing is made in contravention of the provisions of the act then the creditor should be able to claim reimbursement immediately. Otherwise, when is a creditor going to exercise this right? If a borrowing is for 20 years, for instance, then nothing can be done about it until the company is in default.

Mr. Hugessen: The removal of the words "as guarantors" would take care of that.

Senator Flynn: That may be, but I suggest that that should be an immediate penalty, and consequently the liability of the directors would commence right there and then.

Senator Phillips (Rigaud): Yes, I agree with that, but I think that is a...

The Chairman: If we take out the words "as guarantors" then, of course, we create a situation of direct liability. The director could be sued as guarantor. You have to wait to see if you can realize otherwise, because there is the indemnity. Then, there is the other question, that if this is a 20-year debenture or bond that has been issued, and even if this situation developed and the company continued to make its payments and there is no default under the debenture or bond, what is the situation then?

Mr. Humphrys: In putting a time limit on it there is the question of whether you think—it might be a very bad situation, and a question of how long it can be kept afloat in circumstances such as those. There may be a variety of cases. They may not all be bankruptcy cases. It may be a situation in which it is desired to impose conditions on a company, and where we would expect the situation to be resolved within a definite period of time, in which case the company would either close up or would reorganize its affairs to the point where it was in satisfactory condition. However, it is hard to judge. It may take some time to work out difficult situations.

Senator Connolly (Ottawa West): If you withdraw the certificate, or a certificate is not issued, is there any provision here for the notification of the directors of this company, or do you just notify the company?

Mr. Humphrys: The machinery is found in section 15, which provides:

(1) The Superintendent shall whenever (a) in his opinion the financial condition and affairs of an investment company are such that the ability of the company to repay all moneys borrowed by it on the security of its bonds, debentures, notes and other evidences of indebtedness that are then outstanding and to pay all interest thereon is inadequately secured; or

(b) he has taken control of the assets of an investment company pursuant to section 14

forthwith make a special report to the Minister with regard to the financial condition and affairs of the company.

(2) The Superintendent shall give notice to a company to which a special report under subsection (1) relates of the making of the report and a copy of the report shall be sent to the company with the notice.

Senator Connolly (Ottawa West): That is not to the directors.

Mr. Humphrys: No, that is to the company.

Senator Connolly (Ottawa West): Suppose we provide in that section that the directors should also be notified?

Mr. Humphrys: There would be no objection. It might be a good point.

Senator Connolly (Ottawa West): That might solve the problem. It certainly would in the case of the innocent director who goes along with something that is in violation of the act.

Senator Molson: What about public notice in any form?

The Chairman: Before we go into that I wonder if I could direct your attention to this point. The word "creditor", I think, as it occurs at the bottom of page 10 would have to be construed in the context there of "all creditors". The question is: What is it that we want to cover? If there has been a violation and you are making the directors liable for the amount of the money borrowed, then you are making them liable to whom? This section says they are liable to the creditors, and that means the general creditors. Of course, the bond holder or the debenture holder would be in a preferred position in any event if there were any assets. So, when you use this word "creditors"—and I think this was in the bill as it came before us originally, and we have adopted it—what do you intend to encompass?

Mr. Humphrys: It really should be the persons from whom money was borrowed, or their successors in holding whatever instruments were issued.

The Chairman: Yes.

Mr. Humphrys: What we are attempting to do is protect the persons from whom money is raised at a point of time when...

The Chairman: Yes. Can we settle some words for that, Mr. Hugessen?

Senator Leonard: I suggest "the lenders from whom such money was borrowed".

The Chairman: Yes.

Mr. Humphrys: If that includes the specific purchasers of the debentures on the market.

The Chairman: It could be the lenders and their successors.

Mr. Hugessen: The lenders from whom such money was borrowed and their successors in title, because you might have a negotiable instrument.

Senator Phillips (Rigaud): That is the point Senator Leonard was just mentioning.

Senator Connolly (Ottawa West): Does this bind the estate ultimately of the directors?

Mr. Hugessen: Yes. Personal liability would flow.

The Chairman: Is that agreed, as amended? Change the word "creditors" so that it reads:

... directors of the company at the time money was so borrowed are jointly and severally liable to the lenders from whom such money was borrowed and their successors in title.

Hon. Senators: Agreed.

Senator Connolly (Ottawa West): I would like to ask a question on subsection (1) of section 12. I think I am reading it right. It seems to me that that subsection will, in effect, make it impossible for a company that applies for a certificate within the six-month period and does not get it to be enabled to make its borrowings. With some companies I should think the borrowings are going on all the time.

The Chairman: This is limited to new companies. Subsection (1) of section 11 is new companies.

Senator Connolly (Ottawa West): This is only new companies?

Mr. Humphrys: Only new companies.

Senator Leonard: Referring to the drafting of subsection (4), I wonder whether the reference to subsection (1) should come out. Is not it only a borrowing in violation of subsection (2) paragraphs (b) and (c)? Those are the terms under which the liability is to be imposed.

The Chairman: No, because carrying over on to page 11 we say that if the borrowing is in violation of subsection (1) you are liable for the amount so borrowed.

Senator Leonard: That is what I think should come out.

Mr. Hugessen: Subsection (1) is new companies, and has been incorporated primarily for the purpose of carrying on the business of investment.

Senator Molson: Section 11(1)?

Mr. Hugessen: Yes. Subsection (1) refers to section 11(a).

Mr. Humphrys: Its charter will be marked so there can be no doubt about the description of the company.

Mr. Hugessen: There is no possibility of a director making a mistake.

The Chairman: Subsection (1) is in relation to new companies and subsection (2) is in relation to existing companies.

Senator Connolly (Ottawa West): All right, does my question not then apply? Subsection (2) of section 12 applies to existing companies. Are we not in effect through paragraph (c) of subsection (2) making it impossible for existing companies, for a period between the time for making application for the certificate—

The Chairman: No, because for paragraph (c) to apply the existing company must have had its certificate and then lost it in some form, and if it goes ahead and borrows in those circumstances it has a liability.

Senator Connolly (Ottawa West): Let me ask the question in this way. There is an existing company which is in good financial condition; a certificate will certainly be issued to it; it makes its application, and has six months to do it; it does not get its certificate for a while. It can still continue its normal operations without any question?

The Chairman: Yes, that is right.

Senator Connolly (Ottawa West): There is no doubt about that?

The Chairman: That is right.

Mr. Humphrys: That is in subsection (2) (a).

The Chairman: Shall section 12 as amended carry?

Mr. Hugessen: Before that, Mr. Chairman, I think there are some consequential amendments on Mr. Humphrys' amendment to subsection (4). In paragraph (b) it would be in the case of violation of paragraphs (b) or (c) of subsection (2) rather than just of subsection (2) I think the previous saving clause was

subsection (5), which provided another way for directors to escape from this liability, that is to say by the minister issuing a certificate stating that there would be exemption for the company if they had applied in time. That would no longer be applicable, so I think we should take that out.

The Chairman: Which one is that?

Mr. Hugessen: Subsection (5) of section 12.

The Chairman: We should delete it?

Mr. Humphrys: Yes.

Mr. Hugessen: Because it no longer has any application with this amendment.

Senator Phillips (Rigaud): I should like clarification on subsection (4). Did we delete the phrase "as guarantors" or leave it in?

The Chairman: We left it in, although if you wanted it struck out I would favour that.

Senator Phillips (Rigaud): I think this is a very serious point. We are delaying the sanctions against dishonest manipulators of borrowings.

The Chairman: You are creating a situation where there might be immediate realization. A guarantee is not only an indemnity, you have to collect it.

Senator Leonard: I think it is better to omit the word and get liability right away.

Mr. Humphrys: I think it is a good point. The company might be tied up in bankruptcy proceedings for years and the creditors would have to wait.

The Chairman: Is it agreed to strike out the words "as guarantors" in subsection (4)?

Hon. Senators: Agreed.

The Chairman: Does the section carry as so amended, striking out subsection (5)?

Hon. Senators: Agreed.

The Chairman: Are there any questions on section 13?

Mr. Humphrys: I have a point I wish to put before you. As drafted this says:

"Where, in the opinion of the Superintendent, the financial condition and affairs of a company that applies to the Minister for a certificate of registry are such that

its ability to repay is inadequately secured, he shall make a report. Then certain consequences follow. Using the words "a company" makes it broad enough to encompass the case of a company that is not an investment company within our definition but is doing the business of investment and wishes to become registered. If you leave it as it is and such a company voluntarily applied, we could make a report recommending rejection of the application, and then it is thrown into all the machinery of this and is liable to a penalty, would not be able to borrow, and might even be wound up. My question is: should this consequence follow from a voluntary application, or should it be confined to the case of a compulsory application? The difference would be whether you say, "the financial condition and affairs of a company", or "the financial condition and affairs of an investment company that applies". I merely put the question before the committee. A decision might be made either way.

Senator Flynn: It is a good question.

Mr. Humphrys: One rather hesitates in the case of a company that applies voluntarily to say, "If you apply and don't make it"...

The Chairman: If it is turned down that should be the end of the road.

Senator Beaubien: If you are stupid enough to make application and are going to be turned down and put out of business, do you not think you should be put out of business?

Mr. Hugessen: That is the other argument.

Mr. Humphrys: That is the other viewpoint.

The Chairman: Shall we insert the word "investment" in the second line of subsection (1) of section 13? It would then read, "an investment company".

Hon. Senators: Agreed.

Mr. Humphrys: I think it is a good point that there may be companies that are insured whether they are over the line or not.

Senator Phillips (Rigaud): I want to be sure what the insertion is.

The Chairman: The insertion is in the second line of subsection (1), so that it reads, "affairs of an investment company". Is there anything else on that section?... Shall that section carry?

Hon. Senators: Agreed.

The Chairman: Section 14 gives the Superintendent similar powers to those he now has under the recent amendments to the act relating to insurance companies, trust companies and loan companies. In other words, we have updated and made the sanctions tougher. This was a firm view of the subcommittee. It was accepted by Mr. Humphrys and he made a statement regarding it yesterday. Is there any change in language that you would suggest?

Mr. Humphrys: No sir.

The Chairman: Shall section 14 carry?

Hon. Senators: Carried.

The Chairman: The design of section 15 and the two following sections is to increase the Superintendent's power of control, increase the options available to the minister in any event of default and to increase the sanctions available against the company. We borrowed the language, with some revisions, from the language used in bills we had before us recently dealing with insurance companies, trust companies and loan companies, with the idea of making a tighter and stronger bill and also making more definite the powers of the superintendent and the authority of the minister. Are there any comments on this one, Mr. Humphrys?

Mr. Humphrys: There are two drafting points, as a matter of significance, and one point of some consequence. I will speak about the latter one first. In subsection (4) the wording following paragraph (b) reads that:

the Minister shall withdraw any certificate of registry issued to the company and may direct the Superintendent to take control of the assets of the company.

I should like to suggest that the word "shall" be replaced by the word "may". My reason for the suggestion is that the consequences would stem, amongst other things, from the failure of a company to comply with a condition imposed pursuant to paragraph (b). That condition may not be a condition of such consequence that failure to comply to it should force the minister to withdraw a certificate. I believe he should have the option to do so.

The Chairman: There is no objection?

Mr. Hugessen: The suggested amendment by Mr. Humphrys has been incorporated. The language is actually to be found in the draft brief submitted this morning. We have also

added under the previous draft, that the minister had to withdraw the certificate and could direct the superintendent to take control. The new language gives him a third option. He can take one or more of those and also direct a company to cease carrying on the business of investment.

Senator Connolly (Ottawa West): You say that is in the new draft?

Mr. Hugessen: Yes, page 12 of the new draft.

Senator Connolly (Ottawa West): You are going to strike out 5 and put in what you have?

The Chairman: Not No. 5.

Mr. Humphrys: It is on page 12 of the new draft, which is No. 4. The minister may take one or more of the actions described in (c), (d) and (e), that is withdrawal of the certificate.

Senator Connolly (Ottawa West): Does that meet the question you were raising in No. 5?

Mr. Humphrys: I was not raising it in No. 5, but subsection (4).

Senator Phillips (Rigaud): My question, and Senator Molson is associated with me in it, is do we have provisions here for public notice: (a) of revocation of registration certificates and (b) of the proceedings that are being taken under these sections.

Mr. Humphrys: No, sir, there are no provisions for public notice. I would hesitate to recommend the inclusion of such provisions. I believe that most of the problems that are encountered are problems that one wishes to work out with the company. The moment you publish a report of this serious consequence it could be the end of the company. If it is in a financial state that is so serious that half of its creditors have their investments threatened, one can do two things. The first is you can stop increasing its obligations and then attempt to work it out. If that seems impossible then you must take action to close it up. In the interim period I think it is very desirable that the opportunity be available to work with the company and its officers without really bringing the full impact of publicity on it, which in most cases would probably mean irrevocable ruin of the company.

Senator Phillips (Rigaud): We were thinking more of a case where there was a permanent revocation of the certificate of registry.

Mr. Humphrys: There would be notice then, sir, because the act requires a list of registered companies be published in the *Canada Gazette* every year. It does not show which ones have been cancelled.

Senator Phillips (Rigaud): You do not think the public should be on notice when you infinitively withdraw a certificate of registry?

The Chairman: There is a provision at the top of page 13, subparagraph (6):

An investment company or any other person aggrieved by a decision of the Minister taken under the provisions of this section may apply by summary motion to the Exchequer Court of Canada to revise such decision . .

While we are giving wider divisionary powers to the minister, there is a quick and easy way if the company wants to.

Senator Phillips (Rigaud): We are thinking of the reverse situation of alerting the public to the fact the certificate of registry is being revoked. We are not thinking of the aggrieved party but of the public.

The Chairman: The objection of the superintendent to notice such events—I do not quite follow that, because revocation is the end of the road unless there is an appeal taken to the Exchequer Court and the appeal succeeds.

Mr. Humphrys: Revocation would mean that it would not thereafter be able to increase its indebtedness. It would not put the company into bankruptcy unless the minister took action or somebody else took action. It might continue to operate and might switch its affairs into some other—

Senator Phillips (Rigaud): I was sorry to hold up the proceedings in the speech in the Senate when the bill was first dealt with. The problem of closing the company and then dismantling the cloak—here we are up cold against it. You take away the certificate of registry and the public is not advised that it is being done.

The Chairman: How do you suggest that notice of revocation shall be given?

Senator Phillips (Rigaud): In the official *Gazette*.

Mr. Hugessen: I think the place to do that would be in section 18, which provides the annual publication of the list. We could put in a subsection (2).

Senator Phillips (Rigaud): You and Mr. Humphrys know where the insertions should be. I am dealing with the substance.

The Chairman: Subject to that, you said you had a couple of technical points.

Mr. Humphrys: They have been dealt with. I did have a point on subsection (6) but Mr. Hugessen has cleared it up. I would like to draw your attention to it. We should like the decision of the minister to stand during an appeal. Mr. Hugessen believes the drafting does that, so I am satisfied.

The Chairman: Clause 15, as amended, is carried. Now we are on clause 16.

Mr. Humphrys: There are some drafting points. In subclauses (1), (2) and (3) the reference is to investment company. In some circumstances this section might apply to a company after the withdrawal of its certificate of registry. Then it would no longer be an investment company. So we would like this to read a "company" rather than an "investment company."

Mr. Hugessen: This has been corrected.

The Chairman: Those three are all corrected in the revision you have this morning.

Mr. Humphrys: There is another point under subclause (2), the third line from the bottom "or the conduct of its business" should be deleted, I think. This clause 7 was copied from the Canadian and British Insurance Companies Act and we had provision in that for the Superintendent of Insurance to take control of the operation of the company on a court order. That power is not in this bill, so I think the reference to the conduct of the business should be struck out.

Mr. Hugessen: That has been cleaned up in this morning's new draft.

Mr. Humphrys: Subclause (4) could be deleted as being no longer applicable.

Mr. Hugessen: That, too, has been done.

The Chairman: Can I take it that clause 16, as amended, is carried?

Hon. Senators: Agreed.

The Chairman: We turn now to clause 17. The Winding-up Act has been replaced by the Bankruptcy Act as the ultimate sanction. The reasons for this are that in the great majority of cases a company in default under this act

will in fact be insolvent; Section 169A of the Bankruptcy Act already provides that winding-up proceedings shall abate in the case of bankruptcy and in order to avoid duplication it has seemed practical to start with the latter, that is, with the Bankruptcy Act.

The right to initiate bankruptcy proceedings for default under this act is limited to the minister, subject however to the rights of other creditors to proceed in the event of an "act of bankruptcy" under the Bankruptcy Act.

Have you any comments, Mr. Humphrys?

Mr. Humphrys: There is one point, sir. In the wording of the following paragraph (d), it says "the minister may apply to a court of competent jurisdiction".

The Chairman: That is on page 14 of yesterday's draft.

Mr. Humphrys: And "a receiving order shall be made against such company as if such company had committed an act of bankruptcy."

Mr. Hugessen: The new draft revises this.

Mr. Humphrys: The new draft proposes to change the word "shall" to "may" so that the court shall not be compelled to issue. We thought that, on applying to the court, the court should have some jurisdiction, because it should not be confined merely to conditions precedent but should operate in some way to protect the companies against arbitrary action by officials or by ministers.

We would like the application to be linked with the receiving order, so the new draft says "upon such application a receiving order may be made".

Senator Phillips (Rigaud): That is reflected in this morning's draft.

The Chairman: They are in the revision. That is carried?

Mr. Hugessen: Consequential on that, you will notice that in the new draft, today's version, we have added a new subclause (2), to provide, it is suggested, that if the company has launched an appeal, and if the minister subsequently launches bankruptcy proceedings, the bankruptcy proceedings must be adjourned until the appeal is disposed of. That is to tidy it up.

Hon. Senators: Agreed.

The Chairman: Clause 17, as amended, is carried.

We turn now to clause 18.

Mr. Humphrys: You wanted to add something there about the possibility of public notice?

The Chairman: Where do we put that in, Mr. Hugessen?

Mr. Hugessen: I suggest it go in subclause (2). We should renumber the present clause 18 as 18(1) and we make a new subclause (2) reading:

Whenever a certificate is refused pursuant to Section 13 or withdrawn pursuant to Section 15, the Minister shall cause a notice to this effect to be published as soon as possible in the *Canada Gazette*.

The Chairman: Is that amendment acceptable?

Hon. Senators: Yes.

The Chairman: Is there any other comment in relation to clause 18, Mr. Humphrys?

Mr. Humphrys: No, Mr. Chairman.

The Chairman: Then, clause 18 is carried, as amended.

We turn now to clause 19. In clause 19 we have deleted the requirement in the original bill that the Superintendent publish detailed financial particulars with regard to each company.

Also, the Superintendent's power to reduce a company's reported assets is limited to the case of special reports.

If you look in the revision put before you this morning, clause 19, you will see that we have made some changes as against what we gave you yesterday. Have you any comment, Mr. Humphrys?

Mr. Humphrys: No, sir. The only point would be whether you wish that the Superintendent's report be tabled in Parliament.

The Chairman: How does the committee feel about that?

Senator Connolly (Ottawa West): What precedent is there in that? I thought there was, in certain cases, a requirement. Whether it really fulfils the purpose is another matter. What do you think, Mr. Humphrys?

The Chairman: You publish it in the *Canada Gazette*?

Senator Connolly (Ottawa West): That is what I mean. It is published in the *Canada Gazette*. No one reads that. It is tabled in Parliament. It gets even more lost.

The Chairman: My own feeling would be to leave the requirement as they have it and not to require tabling. What is your view, Mr. Humphrys?

Mr. Humphrys: The only reason I raise it is that some of our other acts require reports to be tabled, and it does give a point, that they become public documents.

Senator Connolly (Ottawa West): I suppose that in the old days tabling in Parliament was a factor; but now the tabling is voluminous.

The Chairman: It provides a ready source, if you want to get information.

Senator Connolly (Ottawa West): It is in the *Canada Gazette*.

Mr. Humphrys: It would not be in the *Canada Gazette*—not the publication of the report. So public notice that the report is out now appears in the proceedings of Parliament, because the reports are tabled.

Senator Molson: This refers to clause 19.

The Chairman: Yes, clause 19. The question is whether we should also provide for tabling of reports in Parliament.

Senator Molson: Does not the minister automatically table reports, as a rule?

Senator Connolly (Ottawa West): No, only where he is required by statute to do so.

The Chairman: How do you feel about it?

Senator Phillips (Rigaud): Why should we not leave it as it is? It seems sufficient.

The Chairman: It is a question whether there should be a statutory requirement to table it in Parliament. However, he can table it if he wishes.

Senator Phillips (Rigaud): There may be special circumstances where it would be desirable not to.

The Chairman: He can table it, if he wishes.

Senator Phillips (Rigaud): It is much better to give him the discretion.

Senator Molson: I move we carry this section.

The Chairman: Are there any other questions on section 19?

Mr. Hugessen: In the revision of it this morning we have effected a very small change in subsection (2) in the second last line. We talk now of the "annual or other statement" rather than just the "annual statement", because there may of course be an interim statement or some other statement of affairs.

The Chairman: Shall this section carry as amended?

Hon. Senators: Agreed.

The Chairman: With respect to section 20, the assessment of costs of administering the act is now based on assets rather than income, because the costs of such supervision are likely to be more closely related to assets rather than to income, which in some cases may be negligible.

Senator Connolly (Ottawa West): This again raises the question that was raised by a good many witnesses before the committee. They did not know why an act that was designed to protect the public, so they said, should be paid for by the industry itself.

Perhaps the subcommittee has already considered that in my absence.

The Chairman: Yes, and we have made a change.

Mr. Humphrys: We suggested that it would be more appropriate to be on the basis of assets rather than income in the kind of companies we are going to be dealing with here. All other cases are so dealt with—trust companies, loan companies, insurance companies and banks.

Senator Molson: I see no reason for objection, then.

The Chairman: Is there any change of language in section 20?

Mr. Humphrys: No, sir.

Hon. Senators: Carried.

The Chairman: With respect to section 21 on page 15, you will notice the language in connection with regulations has been very considerably changed. We now provide for regulations not inconsistent with the provisions of the act as the Governor in Council considers appropriate to insure the proper

carrying out of such provisions. Is that approved?

Hon. Senators: Carried.

The Chairman: We come now to section 22.

Mr. Hugessen: You will notice in the draft, owing to a Xerox fault, that the final word on the page has been left out. The word "statement" should follow the word "annual" in that section.

The Chairman: Is section 22 carried?

Hon. Senators: Carried.

The Chairman: Section 23.

Hon. Senators: Carried.

The Chairman: Section 24.

Senator Connolly (Ottawa West): There is no change.

Hon. Senators: Carried.

The Chairman: Section 25.

Hon. Senators: Carried.

The Chairman: Section 26.

Hon. Senators: Carried.

The Chairman: Section 27.

Senator Connolly (Ottawa West): There is no change there.

Hon. Senators: Carried.

Mr. Humphrys: Mr. Chairman, with respect to section 28, this provides the penalty for late filing of the statement. This is really an administrative matter in order to get the statements in on time. I am not sure that the power to waive the penalty in subsection (3) should be so formal as to require a judgment from the minister whether it is in the public interest or not. I would suggest that since it is primarily administrative procedure the words "when he considers it in the public interest" should be struck out.

Senator Connolly (Ottawa West): Does this not require it to go through Council?

Mr. Humphrys: No, sir.

Senator Connolly (Ottawa West): The Superintendent just makes the recommendation to the minister, does he?

Mr. Humphrys: Yes.

Senator Molson: Is there a precedent for the penalty of \$10 a day mentioned in section 28?

Mr. Humphrys: It is in all our other acts.

Senator Molson: I see. It does not really seem to be much of a deterrent for somebody who is trying to fool the Superintendent. I should think the stakes would be higher than \$10 a day.

The Chairman: It is a cheap licence.

Mr. Humphrys: That is only for late filing. If there is a refusal to file, that is a different matter.

The Chairman: Is section 28 carried?

Hon. Senators: Carried.

Senator Phillips (Rigaud): Mr. Chairman, some of us have to leave to attend the finance committee hearing. Before I do so, Mr. Chairman, I would like to record on behalf of the senators our appreciation to you for guiding us through this difficult bill and also in the choice of our counsel who has done such excellent work on this particularly difficult and complex matter.

The Chairman: Senator Phillips, I certainly concur in the second part of your remarks, because Mr. Hugessen has been easy to work with and has done an excellent job.

Senator Connolly (Ottawa West): He is a worthy successor to his father.

The Chairman: I think we should now turn back to the matters we had left from yesterday, when there was to be some discussion between Mr. Hugessen and Mr. Humphrys with respect to the wording of certain parts of the bill.

Mr. Hugessen: I understand Senator Molson wishes to leave in order to go to the finance committee. Perhaps I could then deal first with the matter of subsidiaries, since he is interested in that.

You will recall that we had subsection (5) of section 2 on page 3 of yesterday's draft which provided for the exclusion, from the whole calculation of the 40 per cent rule, of any holdings in a subsidiary, and the Superintendent and Senator Molson both pointed out that this might have the result of causing companies to be included which perhaps should in principle be excluded, and the example given was where you had a company

which had 90 per cent of its holdings in exempt subsidiaries, such as described in subsection (5), and then of course, if it had more than 4 per cent, that is to say 40 per cent of the balance, it would be an investment company. Now, we revised the language to take care of this situation and the new language is now found in subsection (5) of today's draft on page 3. But I should draw the committee's attention to the fact that the effect of this change, if it is passed, would be that you are excluding some companies that you would want to include, because, under the new rule or the new draft as submitted this morning, you could have a company which had \$100 worth of assets, and \$40 or \$39.99 might be in investment-type assets, and the whole of the remaining \$60 could be in a subsidiary, and that subsidiary also could have 40 per cent of its assets, which is 40 per cent of \$60 or \$24 so that whole complex now could have 64 per cent or 63.9999 of its assets in investment-type securities and could still be statutorily exempt from the application of the act.

Senator Molson: I would think that would be less serious because, if you get 64 per cent less a fraction in investment, it means you have 36 per cent in non-investment, and I feel such a situation would be more likely accidental than deliberate in moving that company into an investment company. I can be quite wrong, but I would suspect your real investment company or a true investment company would not very frequently get to those proportions. But I would be interested in other people's opinions on that.

The Chairman: Mr. Humphrys was discussing this point with us yesterday. Have you any contribution to make, Mr. Humphrys?

Mr. Humphrys: The point Mr. Hugessen made is a very valid point, and I think it is a question of repeating the possibility mentioned yesterday of producing a situation, which would be rather absurd, of bringing a company in on the basis of 4 or 5 per cent of its assets. We could deal with that latter case of exemption on the ground that the borrowing was incidental, but that might not be too easy. I think on balance my recommendation would be in favour of the revision notwithstanding we could have this 64 per cent case.

Mr. Hugessen: I just wanted to point that out.

Senator Molson: I think I agree with Mr. Humphrys on that. I can see the possible

danger, but I think it is preferable to the other way round.

The Chairman: I think we will go with the revision. We must keep in mind that this bill is not at its terminal point yet.

Senator Connolly (Ottawa West): That is a very important consideration.

The Chairman: Then the committee approves of the revision of subsection (5) of section 2 on page 3.

Now could we go quickly through the revisions we made arising out of yesterday's session. I will ask Mr. Hugessen to do it because he and Mr. Humphrys have been working on it.

Mr. Hugessen: The first revision is in paragraph (b) of subsection (1) of section 2 on page 1. This is wholly consequential amendment. We have struck out the words "subject to the exceptions in subsection (3) hereof,". You will recall that yesterday we amended subsection (3) so as to make it an exception to the definition of an investment company but not an exception to the business of investment.

The Chairman: Agreed?

Hon. Senators: Agreed.

The Chairman: You will find these in the revision you got this morning.

Mr. Hugessen: Then on page 2, subsection (3) of section 2. In the first draft the opening words of that subsection (3) were "notwithstanding the provisions of paragraphs (b) and (g) of subsection (1)...". It was pointed out yesterday that in the case of a company incorporated after the coming into force of the act primarily for the purpose of carrying on the business of investment, that company should be an investment company notwithstanding that it might fall into one of these categories in subsection (3). In the new draft you will see that it starts with different words. It now reads "notwithstanding the provisions of subparagraph (ii) paragraph (g) of subsection (1)..." which relates it directly to carrying on the business of investment, and does not relate it to the specially incorporated company.

The Chairman: Agreed?

Hon. Senators: Agreed.

Mr. Hugessen: Then on the same page, paragraph (a) of subsection (3) you have the

words "its current or last completed fiscal year...". There was some discussion in the committee yesterday about the word "completed". Mr. Humphrys and I have suggested that the word "completed" should remain in there. If you simply refer to the "last fiscal year" it sounds as if the company has just died.

The Chairman: Carried?

Hon. Senators: Carried.

Mr. Hugessen: The identical change is in sub-paragraph (b) on the same page.

The Chairman: Agreed?

Hon. Senators: Agreed.

Mr. Hugessen: Then also in subparagraph (b) on page 2 we have added the words "determined in accordance with the regulations". The Superintendent suggested and I would recommend as well that it is proper to make recommendations for the determination of what is the capital surplus of a company.

The Chairman: Agreed?

Hon. Senators: Agreed.

The Chairman: Then we have dealt with the Molson amendment on page 3.

Mr. Humphrys: Then on page 3, section 3 subsection (2) gives the Minister power to grant exemption from the application of the Act to any investment company, if he is satisfied that the business of investment carried on by it is incidental to the principal business carried on by it. Senator Leonard raised a point yesterday about a company incorporated after the coming into force of the Act primarily for the purpose of carrying on the business of investment but which intends only to borrow from banks or from major shareholders. I suggested there was no way it could be exempt. I am suggesting now, to meet that point, that the subsection should be divided into two paragraphs so that it would read "(a) The business of investment carried on by it is incidental to the principal business carried on by it, or (b) the company is and intends to remain a company described in any of the paragraphs of subsection (3) of section 2."

Mr. Hugessen: "Subsection (3)"...

Mr. Humphrys: "Of section 2". If it is a company that borrows and intends to borrow

only from banks, then it could apply for exemption.

The Chairman: Agreed?

Hon. Senators: Agreed.

The Chairman: On page 3A?

Mr. Hugessen: On page 3A we find the insertions that were agreed to yesterday from the original draft of the act.

On page 4 there is nothing.

The Chairman: Page 5?

Mr. Hugessen: On page 5, subsection 11, at the bottom of the page, is the wording that was agreed to in principle, but no actual text was put before you yesterday. It permits the minister to direct a special audit and, to appoint an auditor for that purpose.

The Chairman: Carried?

Hon. Senators: Carried.

The Chairman: Page 5A. There is nothing there. We corrected the numbering.

Now on page 6?

Mr. Hugessen: The next change that is of significance is on page 8, where subsections (5) and (6) are taken from the original Bill S-17, as submitted to you, and replace the subsection (5) that was in yesterday's draft.

Senator Connolly (Ottawa West): This is in clause 8 of the bill?

Mr. Hugessen: That is correct, subsections (5) and (6) are now taken, with very small textual changes, from the original draft of Bill S-17. Some of that had been dropped in yesterday's draft.

Senator Connolly (Ottawa West): So you have restored those now?

Mr. Hugessen: Yes.

The Chairman: Agreed?

Hon. Senators: Agreed.

Mr. Hugessen: On page 8A, Senator Connolly (Ottawa West) raised a point yesterday as to whether an upstream investment by an investment company was permitted. Subsection (10), on page 8A, has been changed and wording has been put in there to make it quite clear that an upstream investment is permitted, provided that the parent in whom that investment is made complies with the provisions of paragraphs (a) and (b)

The Chairman: Is that agreed, Mr. Humphrys?

Senator Connolly (Ottawa West): May I look at that for a moment? There may be cases where this is important. If the parent does borrow from the subsidiary, then you want to get the annual statement on the condition of the parent?

Mr. Humphrys: Yes, and we want the right to inspect, if necessary.

Senator Connolly (Ottawa West): I think that is covered.

Mr. Hugessen: There is a small typographical error that has crept in here. Between paragraphs (a) and (b) there should be an "and", of course. There was yesterday, but it disappeared overnight.

The Chairman: There was a storm overnight.

Senator Connolly (Ottawa West): We are going to get a fair copy of all this, I take it?

The Chairman: It will be printed.

Senator Connolly (Ottawa West): Oh, great.

Mr. Hugessen: There is a further typographical error at the top of page 9. What appears as subsection (10) should now be subsection (11), and any reference that is made to subsection (9) should be a reference to subsection (10).

The Chairman: This brings us to the end of a road in connection with which...

Mr. Humphrys: There is one small point. Could I ask that we turn to page 14?

Senator Connolly (Ottawa West): Of the new draft?

Mr. Humphrys: Yes. If you look at the foot of page 13 and the top of page 14, I think there is another typographical error, because paragraph (c) at the foot of page 13 has been repeated at the top of page 14. I also wish to make a comment on one of those paragraphs (c).

The Chairman: We will delete the one at the bottom of page 13.

Mr. Humphrys: You will recall we discussed briefly earlier today the question about voluntary application for registration by a company that is not an investment company. We decided the penalties that follow

refusal to grant a certificate should not be imposed on a voluntary application. Consequently, paragraph (c) should be changed so that "A company" should read, "An investment company", and the reference to "subsections (1) or (4)" should be merely "subsection (1)".

Senator Hugessen: That is correct.

The Chairman: Carried?

Hon. Senators: Carried.

The Chairman: Now I say, for the second time, that we have come to the end of a road upon which there has been a lot of work and a lot of effort. I repeat my thanks to the members of the subcommittee who certainly turned up when we needed them and applied themselves; to Mr. Humphrys for his steady, useful and continued efforts and contribution; and to our counsel who has not only worked diligently but very effectively to produce this result.

Senator Connolly (Ottawa West): And very intelligently.

The Chairman: I think I may say that the net result of all this—and I think it is supported by all those who have sat in on the phases of the bill—is that we have a better bill and a more effective instrument for doing the job it was intended to do, and we have more realistic powers and penalties.

We have recognized the merits contained in much of the evidence and submissions made by the various associations, etcetera, who appeared before us, and they are reflected in delineating the scope of the application of the bill. All that is left is for the committee to say whether we shall report the bill, with the amendments.

Is there anything you would like to add, Mr. Humphrys?

Mr. Humphrys: No, Mr. Chairman.

Senator Connolly (Ottawa West): I agree entirely with what you say. The bill is a much better bill than it was originally, and it is gratifying to know that the minister and his officials have agreed that these changes should be made.

It is with no reflection at all on Mr. Humphrys when I say I think the representations we had from the acceptance companies—from the association and some of the individual companies—were valid representations. I realize that they could not have been

dealt with in this bill, but I would simply say, for the record, that I hope the Government in its wisdom will see fit to do something about the very real problem with which that industry is faced. It is the only industry that has really asked for regulation and supervision. Although the Government cannot be expected to do it in this bill, I would hope that it would in some other measure, because that industry, as a result of bankruptcies and other unseemly conduct on the part of offici-

als of various companies, has had a very black eye, and it is a good industry.

The Chairman: Shall I report the bill with the amendments?

Hon. Senators: Agreed.

The Chairman: It may be a few days before it reaches the Senate, because we have to prepare the report.

The committee proceeded to the next order of business.

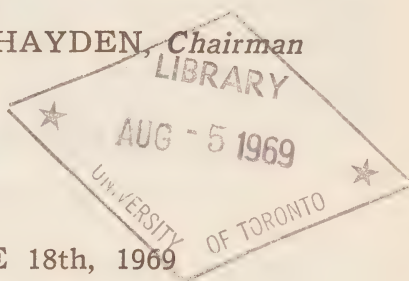


First Session—Twenty-eighth Parliament
1968-69

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE
ON
BANKING, TRADE AND COMMERCE

The Honourable SALTER A. HAYDEN, *Chairman*

No. 46



WEDNESDAY, JUNE 18th, 1969

Complete Proceedings on:

1. The amendment made by the House of Commons to Bill S-26, "Hazardous Products Act", as passed by the Senate on March 28th, 1969; and
2. Evidence presented by the Canadian Petroleum Association.

WITNESSES:

The Canadian Petroleum Association: L. I. Brown, Chairman, Board of Governors. F. A. MacKinnon, Past Chairman, Board of Governors. D. Harvie, member, Board of Governors. G. Connell, co-ordinator, Economic Committee. R. Steele, Vice-Chairman, Income Tax Division.

REPORT OF THE COMMITTEE

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Leonard
Aseltine	Desruisseaux	Macnaughton
Beaubien	Gélinas	Molson
Benidickson	Giguère	Phillips (<i>Rigaud</i>)
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Isnor	Welch
Connolly (<i>Ottawa West</i>)	Kinley	White
Cook	Lang	Willis—(30)

Ex officio members: Flynn and Martin

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, April 22nd, 1969:

"A Message was brought from the House of Commons by their Clerk to return the Bill S-26, intituled: "An Act to prohibit the advertising, sale and importation of hazardous products",

And to acquaint the Senate that the Commons have passed this Bill with one amendment, to which they desire the concurrence of the Senate.

The amendment was then read by the Clerk Assistant, as follows:—

1 *Page 7, Line 6*: Delete subclause (3) of clause 8 and substitute the following:

"(3) Every order adding a product or substance to Part I or Part II of the Schedule shall be laid before the Senate and the House of Commons not later than fifteen days after it is made or, if Parliament is not then sitting, on any of the first fifteen days next thereafter that Parliament is sitting.

(4) If both Houses of Parliament resolve that an order or any part thereof should be revoked, that order or that part thereof is thereupon revoked."

The Honourable Senator Hayden moved, seconded by the Honourable Senator Bourget, P.C., that the amendment be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, June 18th, 1969.
(51)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met at 9.30 a.m. to consider:

1. The amendment made by the House of Commons to Bill S-26, "Hazardous Products Act", as passed by the Senate on March 28th, 1969; and
2. Evidence from the Canadian Petroleum Association on the state of that industry.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Benidickson, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Desruisseaux, Flynn, Gelinas, Hollett, Isnor, Kinley, Leonard, Macnaughton, Martin, Molson, Phillips (*Rigaud*), Thorvaldson, Walker and White. (22).

Present but not of the Committee: The Honourable Senators Everett, Hastings, McLean and Sparrow. (4).

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

After discussion and upon motion, it was *Resolved* to report recommending that the Senate do concur in the amendments to the said Bill.

The Canadian Petroleum Association; represented by the following:

- F. A. MacKinnon, Past Chairman, Board of Governors.
- L. I. Brown, Chairman, Board of Governors.
- G. Connell, co-ordinator Economic Committee.
- R. Steele, Vice-Chairman, Income Tax Division.
- D. Harvie, member, Board of Governors.

At 10.35 a.m. the Committee proceeded to the next order of business.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, June 18th, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the amendment made by the House of Commons to Bill S-26, intituled: "An Act to prohibit the advertising, sale and importation of hazardous products", passed by the Senate on March 28th, 1969, has in obedience to the order of reference of April 22nd, 1969, examined the said amendment and now reports as follows:

Your Committee recommends that the Senate do concur in the said amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

EVIDENCE

Ottawa, Wednesday, June 18, 1969.

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill S-26, to prohibit the advertising, sale and importation of hazardous products, met this day 10.20 a.m. to give further consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have before us this morning to consider, first, the amendment which was made in the House of Commons to Bill S-26. That has been standing before us for some time, but we have not been idle in the meantime because there have been discussions going on with the minister in connection with the form of the amendment.

If you will recall, in Bill S-26 there were two schedules. One contained a list of prohibited hazardous products which could not be imported, manufactured or sold; and the second list was one where such products could only be sold under regulations to be established. Then there was a provision in the bill that the Governor in Council might, by order, add to either of those lists or delete from them.

This committee took the position that, in those circumstances, at some time the order should go back to Parliament for Parliament to decide whether this should carry parliamentary sanction, since Parliament had established in the legislation these lists, and we put in an amendment under which we required that within two years an amending bill must be submitted confirming the order, and, if it were not confirmed or if a bill did not go in within that time, the order would cease to have any effect.

The minister at that time, when he was in committee here, indicated that in his view the

Commons would not accept that kind of amendment; and Mr. Thorson came over here and spent a couple of hours to convince us this would clutter up the work of Parliament to such an extent that it could not be followed.

However, in the Commons they put in an amendment in committee, which the house did not accept; and then they put in another amendment in the house.

The one put in in the house, and which comes back to us now and asks for our concurrence, is this:

Every order adding a product or substance to Part I or Part II of the Schedule shall be laid before the Senate and the House of Commons not later than fifteen days after it is made or, if Parliament is not then sitting, on any of the first fifteen days next thereafter that Parliament is sitting.

Then the next subclause:

(4) If both Houses of Parliament resolve that an order or any part thereof should be revoked, that order or that part thereof is thereupon revoked.

This came back to the Senate, and the Senate was asked to concur in this amendment. On motion, that amendment was referred to this committee for consideration. Then the conferences followed with the minister, the difference being this, that certainly the view of the Chairman and some of the members of the committee was that it really is not anything when you say:

If both Houses of Parliament resolve that an order or any part thereof should be revoked,

that in order to have any effect it should read:

Unless both Houses of Parliament resolve to approve the order,

However, nothing seemed to have been resolved, and the bill does have meritorious points in it.

So, finally, Senator Leonard, as a skilled negotiator, hit upon this possible solution, that if Mark MacGuigan—who is the member in the Commons and who is likely to be identified with a committee which they have or are setting up in the Commons on statutory instruments, just to check into all these excesses where delegated authority is being taken where Parliament should really function—discussed the matter and presented an opinion, as far as Senator Leonard is concerned, I think it is fair to say, he was prepared to act on whatever opinion, with some reservations, Mr. MacGuigan would give.

I have read that opinion, and I think that if the opinion forms part of the record, I would be prepared, just as one member of the committee, to accept the amendment in the form in which it is.

May I read the opinion, and then you may then see why I would be prepared to accept it. This is a letter addressed to Senator Leonard and it says:

You asked my opinion on the power of delegated law-making conferred on the Governor in Council by section 8(1) and (2) of Bill S-26 dealing with hazardous products and on the limitation on that power added by the Senate in section 8(3).

I agree with your view that it is undesirable for the Governor in Council to have such broad powers in the absence of some form of subsequent scrutiny by Parliament, and my position would be the same whether the power was to vary a statutory schedule or merely to make regulations under a statute. However, I would suggest that what is needed is a general solution to the problem of delegated legislation rather than an ad hoc one. The Special Committee of the House of Commons on Statutory Instruments, of which I am chairman, is now in the process of studying what the best such solution would be.

Then he goes on to discuss the terms of reference of the committee and indicates:

It would not be possible at this stage to forecast the detail of the Committee's recommendations,

but he indicates:

that the Committee is giving serious consideration to the British and Australian

precedents of standing committees charged with the responsibility of scrutinizing all statutory instruments according to certain criteria.

Then, in conclusion, he says:

In light of the fact that a general solution is likely within the next year, I would see no danger in the Senate's acquiescing in the House's version of section 8(3). I would also think that the House solution would not stand in the way of the establishment of a general solution, since our Committee will have in any event to incorporate several existing statutory solutions.

In the face of that, knowing the bill is an important one, dealing with hazardous products, and that it would appear quite likely there will be a general solution of this problem it appearing too that the problem we spotted and sought to change is a recognized and acknowledged problem and was a defect in the legislation, I do not think we would be doing anything that would be any negation of our duties and responsibilities by reporting that the Senate should concur in the amendment. However, I would like to have the views of the members of the committee.

Senator Phillips (Rigaud): Should that letter form part of our record?

The Chairman: Yes.

Senator Flynn: It has been read.

Senator Leonard: This was my amendment originally, and I concur in your suggestion in the light of what has happened, particularly having in mind Mr. MacGuigan's letter. He was Dean of the Law School at the University of Windsor, and I have some respect for his legal opinions. You will see he concurs in the correctness of what we were doing, but suggest it should be on a general basis. Not only do I concur with that, but I would add that it may be desirable for the Senate also to refer to some committee the consideration of regulations or subordinate legislation passed in between Parliaments or during Parliament with respect to statutes, so that we will be in touch with the administrative section of Parliament, to see that administrative acts are in conformity with the legislation.

The Chairman: What you are suggesting is that perhaps we should have a specific watchdog committee on delegated authority.

Senator Leonard: Yes, something of that sort.

Senator Croll: Perhaps a subcommittee of the Standing Senate Committee on Legal and Constitutional Affairs.

Senator Leonard: It might even be a joint committee. If a Commons committee is to be set up, perhaps instead of having two bodies doing the same work we might work together. With that additional remark, I concur in your suggestion.

Senator Flynn: Having seconded the amendment moved by Senator Leonard, I want to add this. I generally concur with what you, Mr. Chairman, and Senator Leonard have said. This amendment made by the House of Commons to our amendment was discussed in principle here by Mr. Thorson, putting the onus on Parliament to revoke an order. I remember at the time we mentioned that in the House of Commons this was practically impossible at the initiative of one member. It is not the same thing in the Senate. I think that in the Senate this formula could work, because the Senate could decide whether an order should be revoked, whereas it is at the initiative of a private member in the Commons, which could have no result at all.

The amendment was made in the Commons, and if my memory serves me aright there was no objection from any corner of the Commons, so it is their responsibility. Who are we to tell the House of Commons how they should run their own affairs? When we adopted our amendment we took the facts into consideration and wanted to have a workable formula for them. However, if they do not like it, then it is their responsibility. I am satisfied that the Senate could proceed to revoke the order. I am satisfied that the House of Commons would have a problem in revoking the order unless the Government concurred. However, it is a House of Commons problem and not ours, and I just lay it in their lap.

The Chairman: Is it agreed that we report that in our view the Senate should concur in the amendment to Bill S-26?

Hon. Senators: Agreed.

The committee proceeded to the next order of business.

EVIDENCE

*Presented by the
Canadian Petroleum Association*

The Chairman: Honourable senators, we have present representatives of the Canadian Petroleum Association. They were in Ottawa earlier this week making representations in connection with their interests, so I invited the association to appear before us. We had a good experience with them earlier this year, you will recall, when dealing with oil and gas rights. I think we would like to hear their point of view and some of the things they are concerned about. Senator Hastings, would you introduce the group?

Senator Hastings: As you have indicated, Mr. Chairman, the group represents the Canadian Petroleum Association, who are in Ottawa to make representations to the Prime Minister and Cabinet with respect to the state of the industry. As you said, at your kind invitation they are with us this morning to discuss with honourable senators any questions we might have concerning the state of the petroleum industry of Canada. I will simply leave it at that, except to indicate who they are. The group is led by Mr. L. I. Brown, Chairman of the Board of Governors of the Canadian Petroleum Association. He has with him Mr. Fred A. MacKinnon, a Past Chairman of the Board of Governors; Mr. Al McIntosh, a member of the Board of Governors, and Mr. Don Harvie, a member of the Board of Governors. I will not waste any more of your time, because they would wish to make an opening statement.

The Chairman: Mr. Brown, are you making the opening statement?

Mr. L. I. Brown, Chairman, Board of Governors, Canadian Petroleum Association: Mr. Chairman, honourable senators: what we would like to do, if it is agreeable to you, is to call on Mr. MacKinnon to give the highlights of our submission. We have supplied copies of our submission for distribution, but I do not know whether you have all yet had an opportunity to see it. We thought it might be best if we just gave you a quick summary of what we think are the important highlights of that submission, then if you have any questions we would be pleased to attempt to answer them.

Mr. F. A. MacKinnon, Past Chairman, Board of Governors, Canadian Petroleum

Association: Mr. Chairman, honourable senators: first, on behalf of the association I wish to express our appreciation for this opportunity of meeting here today. As has been indicated, our visit to Ottawa was to meet with the Prime Minister and the Cabinet, in preparation for which we had prepared and presented some time ago the submission that has been referred to. I notice that it is now being distributed, so you will not have had any opportunity to review it. We might deal at present with merely the highlights of the brief and the substance of our visit to Ottawa.

In the preparation of this report, the principal objective of the association was to provide a good insight into the operations of the industry and to focus attention on the industry's present and future role as a very important element in the Canadian economy. By such means we hope to accomplish the objective of developing a working relationship with our Government in Ottawa, which would lead to continuing consultation, which we feel is very important in pursuing these objectives. We feel that it is very evident that this industry will make a tremendous contribution to the country's economy in the future, and our association should like to have the opportunity of participating with authorities in Government in formulating the policies and regulations under which we would operate.

The brief that we have submitted was prepared early in 1969, and recent events have focused attention on certain problems now affecting our industry in both the domestic and export market aspects. We recognize that negotiation for extending crude oil markets requires consideration, not only of the problems of the producing segment of the petroleum industry but of other national industries as well. The association has therefore avoided the temptation to propose oversimplified solutions to the extremely complex problems involved in these matters. Nonetheless, these are important affairs to our country, and solutions must be found. We feel in these matters it is important for industry to meet and work together with the Government in pursuit of informed and aggressive oil marketing policies for Canada.

Reference has been made to the 1967 agreement between Canada and the United States which limits the growth of Canadian exports into the United States. This matter came to light after the preparation and presentation of the association's submission. We have made

our views in this regard known by a letter to the Honourable Mr. Greene, and these affairs also have been discussed. Our main purpose here is to express our hope that in the various task force studies now under way these matters will be considered and will provide, through these studies, a reasonable basis for renegotiating such agreements in order to provide Canadians a more equitable participation in meeting the crude oil requirements of the areas concerned.

We also recognize that this matter must be dealt with in the context of its relationship with other important policies, such as those concerning domestic Canadian markets, the Ottawa Valley line, with respect to use of western Canadian crude oil and the security and other aspects of providing western Canadian crude oil a place in the Montreal market. We are not here demanding these things; we are here suggesting that our association has a vital role to play with the various Government bodies involved in making these studies. We like to be informed in such a way.

The main concern of the association, in all of these considerations, is to promote programs and policies which will provide the incentives necessary to maintain a strong vigorous, continuing exploration effort in Canada so that when the time comes Canada will be in the best possible position to supply the vast hydrocarbon energy requirements of the future in North America.

Some things can be said to emphasize these points. A total of 7.8 billion barrels of Canadian liquid hydrocarbons will be produced and marketed during the 10-year period between 1970 and 1980. At the present time in Canada we have 10 billion barrels of liquids, and in the period I am speaking of an additional 13.1 billion barrels of conventional crude oil or equivalent liquid hydrocarbons must be discovered in Canada by 1980 to have supplied Canada's requirements and still have 15 years' supply of reserves on hand, which is the present situation.

The supply-demand forecasts for the United States further emphasizes the magnitude of the finding effort required to supply the market in that country. United States demand in 1970 to 1980 will be 63 billion barrels. Since the inception of the oil and gas industry in the United States, 136 billion barrels have been found. Present reserves are 39.3 billion barrels and this, at present producing rates, will last in the United States for 10.3 years. In order to satisfy this market requirement

through 1980, and still maintain that 10.3 years of reserve of life index, a total of 96 billion barrels of reserves would have to be found in the United States if it were to supply all of these requirements from domestic reserves.

Senator Everett: It is not, in fact, doing that.

Mr. MacKinnon: We know that is not happening. The United States has not been adding to its net reserves, and it is reasonable to expect their needs will be supplied by exports, offshore drilling or from Canada. We expect the Canadian scene should provide a significant proportion of the imports into the United States. On that particular point our estimates show that imports into the United States will be in the range of five to eight million barrels per day, or two billion barrels per year by 1980. We would expect Canada should be able to supply about one to two million barrels per day or 400 to 800 million barrels annually by 1980.

Here are a few more figures regarding the oil and gas producing industry in Canada. The impact on the Canadian economy has been a very significant one. Without the oil and gas producing industry Canada would have experienced a \$1.5 billion trade deficit in hydrocarbons and sulphur in 1968, a year in which exports were valued at \$727 million. Expenditures in exploration for finding, producing and transporting crude oil had, by 1967, reached an accumulative total of \$12.7 billion out of which governments in Canada received \$3.4 billion in direct payments from mineral rights and royalties. On a cumulative basis to 1968, the industry had spent, excluding interest and income tax payments, \$1.6 billion more than it had received in revenue. The visual evidence of economic growth and development in western Canada testifies very effectively to the contribution that the petroleum industry, along with agriculture and other basic industries, has made to that particular region. This development has at the same time contributed material economic benefits to other areas of the country.

Much of the machinery, for instance, that the oil industry uses in western Canada is manufactured and purchased by the oil industry in Ontario and Quebec.

Future exploration and production activities in new regions, particularly in the Maritimes, can similarly stimulate their economic growth. Much of this preliminary exploratory work in such areas is already beginning. The

association's technical reviews confirm that geologically there still remains in Canada a vast oil and gas reserve which has not, as yet, been discovered. The development of these areas has been, and we hope will continue to be, encouraged by appropriate government policies.

The association believes that the continuance and extension of the existing incentives in exploration is absolutely necessary and more particularly having regard to the fact that the oil industry, by and large, is international in its character. There are many alternative investment opportunities in oil and gas elsewhere in the world.

I would mention again that the brief report that is in front of you is intended as a basis for continuing discussions with any government or government groups. We would emphasize once again that we are extremely desirous of continuing any kind of discussion that is apt to lead to better understanding and an opportunity for our industry to participate seriously with government in determining policy measures under which our industry will continue. Thank you very much.

Mr. Brown: Mr. Chairman, I should just like to mention that I shall be glad to answer any questions. We have Mr. Gordon Connell with us, the co-ordinator of our Economic Committee in the Canadian Petroleum Association. We also have Mr. Robert Steele, Vice-Chairman of the Income Tax Division. Thank you.

The Chairman: We have a very pleasant recollection of the representatives from your association who appeared here when we were dealing with the oil and gas rates bill and they were very very useful to us and you may have noted that we made some changes in the bill because of that.

Senator Macnaughton: Am I right in guessing that your industry, oil and gas, to be viable, should be from 10 to 15 years ahead in exploration in discoveries? In other words, you have a so-called bank on which you count at the present time from 10 to 15 years; but in order to make sure the industry progresses you must try and keep ahead this approximate time, which means investment in exploration and everything else?

Mr. Brown: Yes, sir. Actually, it takes us probably eight years from the time we start exploring an area before we actually start producing the oil. In some of these long range

projects, like the North Flow and the Mackenzie Delta and thinks like that, we have to look away down the road. It means we have to vest our money now and we will not start getting anything out of it for a good many years. That is one of the reasons why we need to foresee a good market in the future and to be sure that we can sell that oil once we find it.

Senator Croll: There is reference here to an agreement between Canada and U.S. oil interests. Is there such a document available? Is it a matter of record? They seem to know about it.

The Chairman: Are copies available, do you know? I do not mean, are they available here now.

Mr. G. Connell, Chairman, Reserves Committee, Canadian Petroleum Association: There are agreements right at this moment on the Lakehead pipeline and another pipeline, so the document is available.

The Chairman: Would you see to it that we get a copy of that, and then we can arrange for distribution?

Senator Everett: You say in your brief that re-negotiation of the oil agreement must be made in context of the relationship with other important policies set for those concerning domestic Canadian markets, particularly in the Ottawa Valley. Would you give me some more information on that?

Mr. MacKinnon: This is in connection with the national oil policy we were operating for so means years successfully. We would like to see the agreement with the Ottawa Valley line and the National Energy Board to be given whatever force is necessary to enforce it.

There are many complex features no doubt in it. The fact is that the Ottawa Valley line was the only one in the national oil policy to be a defined part of the country to be served with western crude oil.

From time to time there have been breaches of that line and we hope to see it amended.

At the same time, there are other problems which need to be examined. That is the simplest statement that can be made in respect of the Ottawa Valley line.

Senator Everett: So in fact you would not like to see it changed but you would like to see it enforced?

Mr. MacKinnon: We would like to see it enforced and considered and that study be given to the other problems concerned.

The Chairman: Mr. MacKinnon, there is a provision in the current income tax bill under which you may capitalize interest on borrowed money for exploration, and you can do that as to the whole of the interest or part of it, in the year in which you make your exploration, and you can go back for three years prior to that time. I suppose that would be of some help, but not a complete solution?

Mr. MacKinnon: I am not really able to discuss that question because in my own experience we have not been in the habit of borrowing money for exploration.

The Chairman: Oh, well.

Mr. MacKinnon: We depend for our exploration funds on cash flow from producing operations.

The Chairman: Yours is a self-sustaining operation. We should have more of them.

Senator Molson: I think this matter has been well publicized and it is well known, but I wonder if for the record if it would not be a good thing to ask what the situation is with regard to the eastern section of Canada in the case of the Canadian western crude oil, what the economic disparity at the moment is and what the future prospect is.

Mr. Connell: We have seen a brief with regard to the measures made in order to move Canadian fuel into the Montreal area. The prices which I am familiar with would indicate that the prices in Montreal for the same quality of fuel is approximately 20 to 25 cents per barrel less than the equivalent fuel in Edmonton.

The interprovincial pipeline tariff from Edmonton to the Toronto area is 53 cents so there is 73 to 78 cents for their oil. In addition to that there would be the cost of transporting from Toronto to Montreal. On a large segment of the pipeline, that might be of the order of 10 to 12 inch. So this could be something in the nature of 83 to 90 cents a barrel, total differential.

There could be some redemptory pipeline tariffs to offset that. However, as a part figure, one could put it that it is 80 to 85 cents a barrel disparity in price.

Senator Phillips (Rigaud): We will be getting, as you know, gentlemen, a White Paper

leading up to a revision of our tax laws generally, and of course you gentlemen know that you have your ups and downs, peaks and valleys, on the whole question of incentive legislation with exploration, and the other type of expenses.

I have two questions. One is this. Has the industry come up with a crystallized settled point of view as to the type of incentive legislation that would be desirable when a new bill will be set before Parliament in due course, as to what really should be done instead of the jungle that we have in the present Income Tax Act and regulations?

In other words, what are the real types of incentive legislation that the industry thinks necessary for its maintenance and expansion? That is the first question.

Question number two is this. It is probably a much more serious question. We are all more or less familiar with the fact that the industry is subject to the channelling of know-how from non-Canadian sources, specifically English and mainly from the United States. My question is, would it be feasible for the Canadian companies to cause a Canadian company to be formed in which the major companies would take a participation, with a view to proceeding to the development scientifically of know-how in your industry so that the Canadian people would have control and access to this centralized know-how instead of it now being in the position where the overall global know-how is obtained only by way of licence or royalty or contract moneys such as you pay to parent companies or the like.

In view of the importance of national defence and in view of the importance of scientific development in your industry, I think Canada would feel much more comfortable if this international industry operating in the main here now were to have a Canadian corporation which would be the company repository of world know-how in this particular industry.

Mr. MacKinnon: I do not wish to preempt any of the other members of our group from making comments on this, but I would like to answer your first question as far as incentives are concerned. We are not asking for any particular change from what we now have. What we would like to have is the assurance that they would be continued. We have, from time to time, made recommendations for some improvements, and I am speaking particularly of the depletion allowance which is a means by which the industry may, hopefully,

regenerate the funds that have been spent as finding costs.

The other part is the write-off of exploration expenditures, and our concern about these results from some of the recommendations contained in the report of the Carter Commission.

So that we in our discussions have emphasized our hope and our need that these incentives should not be changed, but should be maintained and continued.

Senator Phillips (Rigaud): It would be very helpful, if you would do what you wished, as if there were no legislation in the Income Tax Act now, so that those interested in this problem would have available from your industry exactly what you would now like to see in a new act.

Mr. MacKinnon: I think our statements are on record in that connection.

Senator Phillips (Rigaud): They are on record? Thank you.

Mr. MacKinnon: On the matter of technical know-how and expertise, I should say that we are not short of technical know-how or technology and expertise in Canadians in Canada. We are working here very much in an international kind of industry, in any case, and Canada has had contributed to it from many other countries, not just the United States, a tremendous amount of capability, technical know-how, experience and background, and Canadians have learned that.

In any case, we recognize that many of the companies operating in Canada are not Canadian companies in the strictest sense; many of them are controlled outside the country. But the tendency is for more and more Canadians to become involved in top management positions in the Canadian operation of such companies, and it is my opinion that Canada is not suffering in matters of technical know-how by Canadians.

Senator Phillips (Rigaud): That is not quite the answer to my question. I did not indicate that we were suffering currently, because I know that there is a flow of the know-how from the outside world. The question that I put to you was whether the industry would react favourably to a nationally organized Canadian company which would be the depository of the world know-how in the industry. I am thinking in terms of the defence of our country and the autonomy and

independence of Canada. That is why I put the question.

Mr. MacKinnon: Yes, sir, I understand what you are driving at. The idea is an attractive one. It would be a difficult one for the kind of operation that is carried on in terms of the competition between these various operators, but it could be done.

Senator Phillips (Rigaud): Yes. Thank you.

Senator Connolly (Ottawa West): Mr. Chairman, on page 14 of the brief presented to the cabinet, I noted some comments about the Royal Commission on Taxation. From what has been said there I gather that the petroleum industry would consider the tax incentive it now has as rather minimal in the way of tax incentives that would help the industry make the kind of progress the association would like to see it make.

Mr. R. Steele, Vice-Chairman, Income Tax Division, Canadian Petroleum Association: We do consider them minimal in the present tax laws. It has been said that we have asked for various changes from time to time in our submissions to the Minister of Finance, but our main concern, when the Carter Report came out, was the drastic change that he proposed be made. The elimination of incentives could be important, considering the international competition for the investment funds needed. Other countries do have these incentives, particularly the United States, which has a depletion allowance, and if we eliminated ours we would be in a much worse economical position.

The Chairman: I am afraid you will have to speak up, Mr. Steele. We are all having difficulty hearing you.

Senator Connolly (Ottawa West): Mr. Chairman, the witness referred to the fact that the elimination of some of these incentives would decrease the competitive position of these producers. Now I should like to ask whether or not that competitive position would be affecting us both domestically and in foreign markets?

Mr. Steele: You mean whether our oil would be less competitive, for example, in exporting to the United States or other places that you might be able to export it to? Yes, it would.

Senator Connolly (Ottawa West): Just following on that, another witness mentioned the possibility of selling in the Montreal mar-

ket and refining down there. How is your competitive position in northwest Europe? Can you compete there? Can you export into that market?

Mr. Steele: That a question of economics. Perhaps Mr. Connell should answer that question.

Mr. Connell: I would say definitely not. We cannot compete on the Montreal market and it would be even less competitive in the European market.

Senator Connolly (Ottawa West): Basically why?

Mr. Connell: Both the European market and the Montreal market reserve crudes from principally Venezuela, Africa and the Middle East. The prices on those crudes are considerably less, as indicated by the prices I quoted, approximately \$2.30 per barrel into Montreal. They are considerably less than even our lowest price. So you would not have any hope on the present price structure of ever competing in the European market.

It may be possible that, if oil were discovered in the Arctic islands and could be moved by tanker, that oil, once it got on to the open seas, would not be too costly to move over to Europe. Even so, it would also have to compete with low-priced crude oil from Venezuela and the Middle East.

Also, under the present price structure, there is a tendency in most governments to obtain the highest price possible for their crudes. I think we will see some of the prices increasing shortly. But I cannot see—not for a number of years, at any rate—making up the gap of 85 cents a barrel, and it would be even more than that in Europe, because there would be the additional cost of tankering it over to Europe.

Senator Connolly (Ottawa West): Do you think that the assurance of supply from Canada as against not perhaps the assurance of supply from Venezuela but from Africa and the Middle East would be more secure in the event of a national emergency? You heard Senator Phillips (Rigaud) refer to the importance of national emergencies.

Mr. Connell: Well, I don't know. In 1956 during the Suez crisis and in 1967 during the Israeli-Arab war the supply of oil to the Montreal area was certainly reduced from the Middle East.

Senator Croll: How do our depletion allowances compare with those of the United States or any others?

Mr. Brown: The American depletion allowances are considered to be more beneficial because of the way they are applied. They are allowed $27\frac{1}{2}$ per cent of the gross revenue but not more than 50 per cent of the net production revenue whereas ours is $33\frac{1}{2}$ per cent of the net profits attributable to production after deducting all drilling and exploration expenses. The problem is that with many companies in Canada they cannot claim these depletion allowances because after the expense of drilling and exploration has been paid there are no profits left from which to claim them. In other words, we are only allowed to claim depletion allowances against income, and we do not have any income. In fact in some instances you may run out the production of a field before you ever get to the stage where you can claim depletion allowances and that is why the association has called for depletion allowances that could be taken from production revenue similar to the situation in the United States. At the present time unless you are in a profitable position there is no revenue after paying for drilling and exploration from which you can deduct your depletion allowances.

Senator Molson: In the brief on page 14 you comment concerning the Royal Commission on Taxation in sub-paragraph (d) and you say:

Contrary to the Commission's findings, present tax law does contribute towards some measure of neutrality. . .

And those are the words I want to emphasize—"measure of neutrality". I do not know what that means.

Mr. Brown: It simply means that the Commission was saying that the tax law should be neutral rather than favouring or encouraging investment in certain areas. That is to say, it should have a neutral effect, and in the light of the economics of the situation the complaint was that this was not so in the oil industry. We are here trying to show there is some measure of neutrality, but how great it is may be difficult to nail down. You have to consider not only the income tax provision, but the fact that there are many other taxes, municipal and property taxes which the oil industry people have to meet and which may be more than that paid by any other industry. You have to consider all these things. The

Commission said these things were outset their terms of reference and did not take them into account.

Senator Everett: In your brief you are expressing concern with several concepts particularly renegotiation of the agreement with the United States. You are in fact suggesting certain new tax incentives and you are also suggesting that the Canadian Government should not be involved in exploration ventures. It seems to me that these suggestions of yours would tend to cost the average taxpayer in Canada a considerable sum of money which you hope to take into your industry and use for exploration and development. Now all that is very worthy, and I am sure the people of Canada would generally support that, but in the long run they are consumers and they are going to want to know what the oil industry is doing about the prices of its products which the consumer uses for running his car and heating his home and many other purposes. What is your industry doing to decrease the costs of these to the consumer and what is your intention if you get this sort of special treatment that you are suggesting your industry should have?

Mr. D. Harvie, Member, Board of Governors, Canadian Petroleum Association: I think the answer to your question, senator, may sound as if I am trying to evade it. The organization here today is a producing organization and we are not competent to speak in terms of lower prices.

Senator Everett: I would not want to put you in any awkward situation but I would point out that the report on the retail oil industry in Alberta indicates in clear terms that there is a gigantic world-wide oil cartel and that some 5 or 6 international fully integrated oil operations control the oil industry in Alberta, in Canada and throughout the world. So I wonder if it is fair for you gentlemen to say "we are in exploration and production and that is our side of the equation and we cannot talk about marketing." You do represent an industry that is integrated from top to bottom on account of these major oil companies, mostly American but some European, that completely control the world-wide flow of oil. What I want to say is that I think when you as producers come here you should bear in mind that you have an obligation because you are part of that highly integrated industry, and that in the long run the benefits that you receive must be passed on to the consumer of Canada as a benefit to him.

Senator Kinley: Which is the bigger market, the domestic market or the American market for western oil?

Mr. Connell: Currently the Canadian market is the larger market being approximately 700,000 barrels per day. That is to say in 1968 it was 700,000 per day compared with 500,000 per day in the American market. But we expect in the future the American market should grow more rapidly and should eventually exceed the domestic market. You can see this by referring to page 22 where it shown that in 1980 the estimate for domestic consumption will be 1.1 million barrels per day while the export market will be 2.1 million barrels per day and in 1985 we expect domestic consumption to be 1.3 million barrels per day while the export market will be 3.0 million barrels per day. The prospects for growth are actually better in the American market than in the Canadian market.

Senator Kinley: Now, to take the Atlantic provinces, how far east do you go? Are you in Montreal with your pipe line?

Mr. Connell: No, the pipe line goes as far as Toronto.

Senator Kinley: In view of water transportation and the big tankers, do you not think that it would be advantageous for the Atlantic provinces to centralize their supplies in

their own region and have it come in by water? For instance, in Come-By-Chance, Newfoundland, there is a big company and that region needs that kind of industry. Do you not think you could develop a farther east or is it not economically good?

Mr. Connell: It certainly is not economical at the present time. There may be oil discovered off the east coast of Canada which could move into, say, the Maritimes area or into Montreal. We expect, if this S.S. Manhattan project proves successful, that oil could be moved by tanker through the Northwest Passage in connection with the Arctic Islands. The market for the Arctic Islands oil would be Quebec and the Maritimes.

Senator Kinley: I heard Senator Connolly (Ottawa West) speaking of national emergencies. You have two major means of transportation in Canada that could be easily destroyed. It is a very restricted way of supplying from the ocean to the Maritimes, from the oil producing country, and you have the two opportunities instead of the one.

The Chairman: Are there any other questions? Then I thank the representatives of the association for coming here this morning. Gentlemen, we are glad you came.

The committee proceeded to the next order of business.



First Session—Twenty-eighth Parliament

1968-69

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE
ON
BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 47

WEDNESDAY, JUNE 18th, 1969

Complete Proceedings on Bill C-183,

intituled:

“An Act to establish the Export Development Corporation and to facilitate and develop export trade by the provision of insurance, guarantees, loans and other financial facilities”.

WITNESSES:

Export Credits Insurance Corporation: H. T. Aitken, President.

REPORT OF THE COMMITTEE

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Leonard
Aseltine	Desruisseaux	Macnaughton
Beaubien	Gélinas	Molson
Benidickson	Giguère	Phillips (<i>Rigaud</i>)
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Isnor	Welch
Connolly (<i>Ottawa West</i>)	Kinley	White
Cook	Lang	Willis—(30)

Ex officio members: Flynn and Martin

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, June 12th, 1969:

"Pursuant to the Order of the Day, the Honourable Senator Leonard, moved, seconded by the Honourable Senator Isnor, that the Bill C-183, intituled: "An Act to establish the Export Development Corporation and to facilitate and develop export trade by the provision of insurance, guarantees, loans and other financial facilities", be read the second time.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Leonard moved, seconded by the Honourable Senator Isnor, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, June 18th, 1969.

(52)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met to consider:

Bill C-183, "Export Development Act".

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien, Benidickson, Burchill, Carter, Connolly (*Ottawa West*), Desruisseaux, Gelinas, Hollett, Isnor, Kinley, Phillips (*Rigaud*), Walker, Welch and Willis—(16).

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Resolved,—That 800 copies in English and 300 copies in French be printed of these proceedings.

The following witness was heard:

Export Credits Insurance Corporation:

H. T. Aitken, President.

Upon motion it was *Resolved* to report the said Bill without amendment.

At 9:00 p.m. the Committee proceeded to the next order of business.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, June 18th, 1969.

The Standing Committee on Banking, Trade and Commerce to which was referred the Bill C-183, intituled: "An Act to establish the Export Development Corporation and to facilitate and develop export trade by the provision of insurance, guarantees, loans and other financial facilities", has in obedience to the order of reference of June 12th, 1969, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

Salter A. Hayden,
Chairman.

THE SENATE

THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

EVIDENCE

Ottawa, Wednesday, June 18, 1969

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-183, to establish the Export Development Corporation and to facilitate and develop export trade by the provision of insurance, guarantees, loans and other financial facilities, met this day at 8.30 p.m., to give consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

Upon motion, it was *resolved* that a verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 copies in French be printed.

The Chairman: Gentlemen, I call the meeting to order. The first bill we have this evening is C-183 and we have two witnesses, Mr. Aitken and Mr. J. R. Midwinter.

Mr. Aitken, in accordance with our practice, would you come forward and tell us what this bill proposes to do.

Mr. H. T. Aitken, President, Administration, Export Credits Insurance Corporation: Mr. Chairman and honourable senators, I have been told I have six minutes to give you a resume of what this bill involves. I trust you know that the proposal is to establish the Export Development Corporation to succeed the Export Credits Insurance Corporation which has been operating for the past 24 years.

The Export Credits Insurance Corporation has been doing two things. We have been insuring Canadian exporters against non-payment by foreign buyers on the one hand and on the other side we have been providing long-term financing where capital projects abroad in the developing countries require such financing, and where it is not available

from the private sector or commercial sources.

This bill provides for the establishment of an Export Development Corporation which will succeed the ECIC. It will differ in five main respects. First, the present board of ECIC is composed of people from the public service. The proposal in this bill is that there be eight people from the public service, as ECIC, plus four from outside—bankers, industrialists, financial people.

Senator Connolly (*Ottawa West*): Insurance executives?

Mr. Aitken: Perhaps. That is the first change.

The second change is that under ECIC we can insure only the export of goods and services. Under EDC we will be authorized to insure almost any transaction between a Canadian businessman and a foreign businessman—the leasing of goods, royalty arrangements, licensing agreements, the sale of goods and services, too. That is the second major change.

The third change is that we will be authorized to provide foreign investment insurance. If a Canadian company decides to set up a company say in Mexico, Brazil or Chile we, the EDC, will be authorized to insure that investor in the foreign country against expropriation of its assets, or against inability to repatriate the capital invested or to transfer profits back to Canada, or against the loss of his investment due to revolution, insurrection, rebellion, etc.

Those are the three main things against which EDC will be authorized to insure him.

The next most important change from what ECIC does to what EDC expects to do is that, thus far, since 1960, ECIC has lent funds for the export of Canadian capital goods for projects abroad on behalf of the Government.

We have received the money from the consolidated revenue fund and we have been principals in the lending, with the foreign borrower required to pay us. But we are not required to repay—ECIC is not required to repay the consolidated revenue fund unless we get repayment from the foreign borrower.

The proposal in this bill is that EDC will be both borrower and lender. We will operate as does the Export-Import Bank in the United States. We will borrow from the consolidated revenue fund or, alternatively, subject to the approval of the Minister of Finance we can borrow in the market place and lend abroad for all capital projects. The money is spent in Canada, to purchase capital equipment in Canada for shipment abroad.

Gentlemen, I think those are the main differences in this bill as compared with the operation of the Export Credits Insurance Corporation, which, as you know, has been in business for the past 24 years. One of the reasons for proposing this bill is that it is almost 25 years since the Export Credits Insurance Act was passed in August, 1944, and we have had 15 amendments to the present act so that it is a wee bit of a hodgepodge and a mixture. So the Government felt that it would be appropriate in bringing in these new concepts to have an entirely new bill presented to the House of Commons and to the Senate.

The Chairman: Are there any limitations on the amount of money you may get?

Mr. Aitken: Under the present ECIC Act we have \$200 million credit for the corporation, and we can take up liabilities to that extent. The Government can tell us to insure up to \$600 million. For example, when we sell wheat to Hungary, Czechoslovakia, Poland and Romania, we can do that. That is the Government's responsibility. So we have \$800 million for insurance under the Export Credits Insurance Act.

Under bill C-183 the proposal is that the corporation, EDC, will have the power to insure, on the responsibility of its own board, up to \$500 million. Then the Government will have the authority to instruct us to insure up to another \$500 million, making a billion dollars in all as compared with the present \$800 million.

On the long-term financing, at the moment, under the Export Credit Insurance Act, ECIC with Government approval, with an Order in Council required in each case, has authority to provide financing up to a ceiling of \$500

million. The proposal under Bill C-183 is that the EDC will have the authority granted to its board to provide financing up to \$600 million on its own responsibility, being both borrower and lender, just like the export credits bank in the United States, plus \$200 million which the Government will be able to provide out of the Consolidated Revenue Fund, and we will act as lender but the Government will carry the risk. Thus, EDC will have \$800 million to lend as compared with the present \$500 million ceiling.

So that is a billion dollars for insurance as compared with \$800 million; \$800 million for financing as compared with \$500 million plus \$50 million for this foreign investment insurance, making a total of \$1,850 million as compared with the present \$1,300 million.

The Chairman: You do have a limitation on borrowings from the public or in the marketplace?

Mr. Aitken: Correct.

The Chairman: What is the nature of that?

Mr. Aitken: That is related to our capital, which is proposed at \$25 million share capital and \$25 million donated capital surplus, making \$50 million in all. And our limitation of borrowing under that, having regard to that capitalization, is 15 times or \$750 million. This will reflect the \$600 million we are authorized to lend plus \$150 million in relation to the export credits insurance activities.

The Chairman: This limitation of 15 times applies whether you borrow in the market or from the Consolidated Revenue Fund?

Mr. Aitken: Yes, sir.

The Chairman: Are there any questions?

Senator Connolly (Ottawa West): Mr. Aitken, what is your loss record?

Mr. Aitken: As I said, senator, we have been in business almost 25 years. We issued our first policy in September, 1945, and we have insured in gross a total of \$2,800 million in exports, of which the corporation has insured \$1.8 billion on its own with the Government insuring \$900 million. We have paid out \$15.5 million in claims in a total of 2200 claims to 800 exporters. Of the \$15.5 million paid out we have recovered \$11.5 million, leaving roughly \$4 million out of which we have had to write off \$1 million, with \$3 million potentially recoverable. Out of the \$3 million we might get back \$1,500,000.

The Chairman: That is a pretty good operation.

Mr. Aitken: The important point is, sir, that we were set up to provide an insurance service on a break-even basis. If you take our total gross premiums less our net losses and our operating expenses, we are in the black only \$4 million. When you consider that in relation to the \$2.7 billion insured, it is just minuscule. It is just like that. We are just balancing. It is less than 2 per cent of our current outstanding liabilities.

The Chairman: You may have a formula there, Mr. Aitken, that other businesses would like to learn the know-how of.

Senator Walker: He also has a computer brain, hasn't he?

The Chairman: Oh, yes.

Senator Connolly (Ottawa West): He has performed here before.

The Chairman: Yes, we know him well. He has been before us a lot of times.

Senator Kinley: How about your rates?

Mr. Aitken: Well, senator, the average rate for the short-term insurance business we do—and that means consumer goods sold on terms ranging from cash against documents up to 180 days—the average rate is less than one third of 1 per cent. So, if you sell \$1,000 abroad, all it costs you is \$3 to insure with us.

Senator Kinley: Have you competitors in other countries?

Mr. Aitken: In effect, in that there are 21 countries in the world outside the Iron Curtain who have similar organizations. You may know that ECIC belongs to an international organization known as Union des Crédits Nationaux, and we meet periodically to discuss our practices, procedures, loss experiences and recovery practices. We also discuss premium rates, et cetera, and we feel that our rates are comparable with those of others. In certain cases they are higher; in certain cases they are lower.

Senator Phillips (Rigaud): Mr. Aitken, will you be good enough to look at section 23 in Part II of the bill, subsection (i), dealing with investment in a foreign country? That is on page 9 of the bill.

You indicated that one of the major changes in this bill was that for the first time

we in effect will guarantee investments in a foreign country.

Mr. Aitken: Yes, sir.

Senator Phillips (Rigaud): Before I come to the question, I note that, in the way foreign countries are defined, there is generally no distinction drawn between underdeveloped countries and countries that are not underdeveloped.

Mr. Aitken: Yes, sir.

Senator Phillips (Rigaud): We are, therefore, giving powers to the new corporation to allow investments to be made in a foreign country by a Canadian, without introducing a limitation in respect of underdeveloped countries that the residents of that foreign country be invited to participate in the investment that a Canadian makes in such a country.

Now, we in Canada have been complaining about Americans coming in here and, in effect, controlling our economy to a very considerable degree because their capital is fluid and international. It would appear that we are doing the same thing here, in that we are encouraging Canadians to go to underdeveloped countries to invest in such countries, and in doing so inviting criticism in the event that such investments should be successful by not providing for the residents of such a country to be invited to participate in that investment while at the same time the national economy of our country and Canadians dollars at large are being used for that purpose. Now my question in this; has any consideration been given to this problem of the way in which we are exposing ourselves to the criticism that in Canada we are encouraging Canadians to invest particularly in underdeveloped countries while we are not inviting others to be associated with us in such investments and we foot the bill if it is a failure.

Mr. Aitken: If you look at page 17, section 34 (2) you will appreciate what I have described with regard to the insurance operation is so far as it relates to what a corporation such as the EDC will be able to do and what the Governor in Council considers it necessary to do with regard to a foreign investment. Only the Governor in Council can authorize a particular foreign investment and in relation to any particular foreign investment this section says as follows:

(2) The Governor in Council shall not authorize the Corporation to enter into a

contract of insurance pursuant to subsection (1)

(a) in respect of any investment in a foreign country that will not provide economic advantages to Canada or contribute to the economic growth and development of the country in which it is made;

I think that is the salient feature of this particular section.

The Chairman: That might happen, and yet the local people might not have any investment.

Mr. Aitken: It is not inconceivable.

Senator Phillips (Rigaud): I think it is a mistake, Mr. Chairman, and through you I address this comment to Mr. Aitken, and I think it is bad government policy so to do. I realize at this stage of the session it is not desirable to suggest any amendments to hold up this bill, but I for one would like to record my concern about the failure to deal with this aspect of the subject, and I am inviting government to give serious consideration to an amendment to the bill to see that we do not expose ourselves in underdeveloped countries to the criticisms and dangers to which I have just referred.

Mr. Aitken: Perhaps it might be helpful if I were to tell the senator that in the memorandum to Cabinet preceding this particular provision in the Export Development Act, it was stipulated that investments might be made only in developing countries. In other words we will not be authorized under current government authority to provide, say, guarantees for investment in West Germany, for example. It may only be in a developing country in South America, Africa, the Middle or Far East, and the gross total is \$50 million which is really not a very substantial sum.

The Chairman: It is a large sum if you owe it.

Mr. Aitken: But as a gross total it is not a very substantial sum. In addition, it is not the government's money we are putting up; it is the private investor who is putting up the money. I do not think the \$50 million involved in this will be of such world-changing proportions that it will affect anybody.

Senator Connolly (Ottawa West): I would like to say something on this, if I may, Mr. Chairman, which might help Senator Phillips. I do not, of course, know too much about the

non-Commonwealth countries, but this problem has been discussed at the Commonwealth Parliamentary Association meetings particularly in so far as it relates to developing countries, and I think it is fair for me to say that they welcome this kind of legislation and they welcome the help they get from it. I have yet to hear, and this matter has been discussed on a number of occasions, anybody say that they feel that Canadians are attempting to dominate any part of their economy as a result of the operation of this act. They are very glad that we do this. One of the things we have discussed is whether or not the domestic industries welcome the contribution that can be made from outside by this or other means to develop their economies, and whether or not they have any plans for expropriating these industries, or whatever it is that is insured. They always give an assurance that when they see this kind of development coming in they are very delighted indeed. It gives them a lift, and this applies particularly to countries that are not yet at what is known as the take-off point.

Senator Phillips (Rigaud): I would like to answer Senator Connolly by inserting in the record, notwithstanding what he said, that gratitude is a lively sense of favours to be received. Once you make these investments in these countries and the local people are not participants, we are heading for trouble.

Senator Willis: I would like to say, Mr. Chairman, that very few people have more experience than Senator Connolly in dealing with outside countries, and he knows what he is talking about.

Senator Connolly (Ottawa West): So does Senator Phillips.

Senator Carter: This is a principle and we would like to have some assurance that it will be considered.

Mr. Aitken: If you look at page 17 you will note in paragraph (d) that a corporation will be required to have an assurance that would insure the investment against risk of loss in a country.

The government of which has not given a written assurance satisfactory to the Government of Canada, that, in the event of the payment by the Corporation of any loss under a contract of insurance entered into pursuant to subsection (1), the corporation will be ..(ii) accorded by that government and by the laws of that

country treatment as favourable as that accorded other persons suffering loss by reasons of the causes described in subsection (1).

That means that the government of the importing country would recognize the investment. Senator Phillips has suggested that there might be some concern on the part of the developing country that Canada was acting as we occasionally have felt that foreign investors were acting in Canada, but I think that this particular section of the act provides an assurance to the recipient country that they will have certain control over the investments to be made, and they will give such assurances as they feel they wish to give, and if they feel the investment is one which they do not welcome they will have the liberty to deny it.

The Chairman: That is not the point Senator Phillips made. He said that they might like the investment very much, and it might be very successful, and if it is, some of the local people might want to have a part of the investment. That was the point he was making.

Senator Carter: We have no provision for even inviting them to participate.

The Chairman: I would think, Senator Carter, if you have local people who wanted to make an investment of this nature the government would be very keen to bring them into the picture.

Senator Walker: What are the facilities under the bill for doing that?

The Chairman: Assuming there are not any facilities I would think that if any such attitude were indicated there would very quickly would be or could be preparations to operate less heavily in those countries.

Senator Beaubien: Mr. Aitken, in the past what kind of experience have we had?

Mr. Aitken: None.

Senator Beaubien: I do not necessarily mean us, but what experience has there been generally?

Mr. Aitken: There have been facilities in the United States for the past 20-odd years, and they have collected premiums of something like \$75 million, and have paid out less than \$600,000 in claims. In other words, it has been an extremely successful operation.

The Chairman: But that is not the angle we are interested in.

Mr. Aitken: I appreciate that, but, nevertheless, this is the type of thing. What the world is trying to do today is to transfer resources from the "have" countries to the "have nots"; to transfer from the private sector to the developing countries; to have the Canadians, the Americans, the British, the French, the Italians, the Germans, the people with the money, to invest in the developing countries. This is to encourage these people to invest in developing countries. Those countries will set forth their own regulations to determine what investments they will accept, but nevertheless they count. Canadians are striving to the 1 per cent of the Gross National Product goal to provide aid and capital assistance and investment, and this assistance will count towards that 1 per cent goal.

The Chairman: Mr. Aitken, would you, under the bill, feel you had authority to loan money to a local company in one of these developing countries, where the local citizens owned the actual equity in the company?

Mr. Aitken: Yes, sir.

The Chairman: Are there any other questions?

Senator Connolly (Ottawa West): But you would have to get that specially from the Government?

Mr. Aitken: No. The very first thing we did under ECIC, the same is true under OECD, the first foreign loan we made was to a company in Chile. They put up something like 50 per cent equity and we, Canada, ECIC, lent the 50 per cent borrowing, but they spent all that money in Canada, which provided the export of capital equipment from Canada. This is all related to exports from Canada, even the foreign investment insurance. As I said earlier, page 17, under paragraph 2(a), they are supposed to provide economic advantages to Canada.

Take a company which makes road graders, and let us say they are selling them to Mexico. The Mexicans say, "We are tired of importing them, and we want someone to build road graders here." And the company say, "All right, we will establish a subsidiary in Mexico, but it is going to cost \$2 million." They agree to that, and then they come and say, "Will you insure this investment against expropriation, inability to repay, or revolu-

tion which may destroy the assets?" Then they set up a subsidiary and they sell to that subsidiary, not road graders but components which make the road graders, and that is, therefore, a benefit to Canada. Also, at the same time, that contributes to the economic growth and development of the country in which the road graders are made.

Senator Connolly (Ottawa West): But in that case you are insuring the Canadian who is doing the exporting?

Mr. Aitken: Yes.

The Chairman: Are there any other questions?

Senator Phillips (Rigaud): Yes. Following Mr. Aitken's point, will Mr. Aitken answer me this question. If, we will say, a company in Ghana is wholly-owned by residents thereof, are we authorized under the bill to guar-

antee the credits of that corporation, and, in the event of revolution or expropriation there, will we indemnify the residents of that country?

Mr. Aitken: No, we can indemnify only Canadian residents.

The Chairman: Are there any other questions?

Are you ready to deal with the bill?

Hon. Senators: Agreed.

The Chairman: Shall I report the bill without amendment?

Hon. Senators: Agreed.

The Chairman: Thank you.

The committee proceeded to the next order of business.



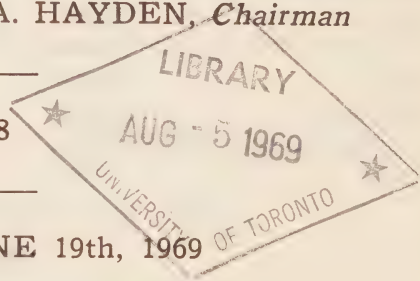
First Session—Twenty-eighth Parliament

1968-69

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE
ON
BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 48



THURSDAY, JUNE 19th, 1969

Complete Proceedings on Bill C-195,

intituled:

“An Act to amend the Fisheries Improvement Loans Act”.

WITNESS:

Department of Finance: J. A. Renwick, Government Institutions
and Business Division.

REPORT OF THE COMMITTEE

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Leonard
Aseltine	Desruisseaux	Macnaughton
Beaubien	Gélinas	Molson
Benidickson	Giguère	Phillips (<i>Rigaud</i>)
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Isnor	Welch
Connolly (<i>Ottawa West</i>)	Kinley	White
Cook	Lang	Willis—(30)

Ex officio members: Flynn and Martin

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, June 18th, 1969:

"Pursuant to the Order of the Day, the Honourable Senator McLean, moved seconded by the Honourable Senator Bourget, P.C., that the Bill C-195, intituled: "An Act to amend the Fisheries Improvement Loans Act", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator McLean moved, seconded by the Honourable Senator Gélinas, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

THURSDAY, June 19th, 1969.

(53)

At 11:15 a.m. the Standing Senate Committee on Banking, Trade and Commerce proceeded to the consideration of:

Bill C-195, "The Fisheries Improvement Loans Act".

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien, Burchill, Carter, Connolly (*Ottawa West*), Flynn, Gélinas, Hollett, Isnor, Kinley, Leonard, Molson, Phillips (*Rigaud*), Thorvaldson, Walter, Welch, White and Willis. (19)

Present, but not of the Committee: The Honourable Senators Irvine and Methot. (2)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Resolved:—That 800 copies in English and 300 copies in French be printed of these proceedings.

The following witness was heard:

Department of Finance: J. A. Renwick, Government Institutions and Business Division.

Upon motion it was *Resolved* to report the said Bill without amendment.

At 11:40 a.m. the Committee adjourned.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

THURSDAY, June 19th, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill C-195, intituled: "An Act to amend the Fisheries Improvement Act", has in obedience to the order of reference of June 18th, 1969, examined the said Bill and now reports the same without amendment.

All which is respectfully submitted.

Salter A. Hayden,
Chairman.

THE SENATE

THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

EVIDENCE

Ottawa, Thursday, June 19, 1969

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-195, to amend the Fisheries Improvement Loans Act, met this day at 11.30 a.m. to give consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, Mr. Renwick, of the Department of Finance, is present to explain Bill C-195 to us. Will you proceed with your explanation, Mr. Renwick?

Mr. J. A. Renwick, Department of Finance: Thank you, Mr. Chairman. I think all members of the committee are aware of the fact that it was hoped to include these amendments in Bill C-151, which was before the House of Commons in January and February. It was not possible to do this, so it became necessary to present a second bill.

Clause 1 of this bill increases the amount of loan that a fisherman may have outstanding under this legislation from \$10,000 to \$25,000.

The Chairman: That is by way of loan?

Mr. Renwick: Yes, that is by way of loan.

Senator Connolly (Ottawa-West): Are those secured loans?

Renwick: Yes, they are secured.

Senator Connolly (Ottawa West): By what—the boats?

Mr. Renwick: Generally, by a mortgage on whatever was purchased.

Senator Walker: A mortgage on what?

Mr. Renwick: A mortgage on the boat or the particular equipment that the fisherman purchases.

Senator Walker: A chattel mortgage?

Mr. Renwick: Yes, and in addition a promissory note is signed by the fisherman.

Senator Connolly (Ottawa West): You do not take any other mortgages from the fisherman?

Mr. Renwick: This is possible. The legislation says that the bank may take such additional security as it deems expedient, but in the circumstances this very seldom happens. It is usually a chattel mortgage.

Senator Carter: Mr. Renwick, the fisherman still gets his loan from the bank?

Mr. Renwick: Yes.

Senator Carter: So it is really up to the individual bank manager to decide whether he gets the loan or not?

Mr. Renwick: Yes, a condition of the Government guarantee is that the bank makes the loan to the fisherman with the same care and caution as it would exercise in the normal course of its business.

Senator Walker: And if there is default, what happens?

Mr. Renwick: If the loan goes into default within a period...

Senator Walker: Who eventually pays?

Mr. Renwick: The Government eventually pays.

Senator Flynn: That is, if the fisherman is unable to repay the loan?

The Chairman: And if the assets are not sufficient to liquidate the loan.

Senator Connolly (Ottawa West): What is the loss ratio?

Mr. Renwick: It is extremely low. In excess of \$7 million has been lent since 1955, and the Government has paid out just over \$6,000 in claims.

The Chairman: That is not a bad record—\$6,000 out of \$7 million.

Senator Burchill: What interest rate does he pay?

Mr. Renwick: Currently the maximum rate of interest that may be charged is $7\frac{3}{4}$ per cent.

Senator Burchill: The current rate.

The Chairman: It is $7\frac{3}{4}$ per cent at the present time.

Senator Thorvaldson: In other words, it seems to me this would have been perfectly safe and sound banking business but the banks are just too conservative to tackle the

business without guarantee. I think they ought to be censored for that!

The Chairman: Do not let us have a motion to that effect. This is a collateral issue, and that is not part of our instructions.

Senator Walker: This is just an amendment.

The Chairman: That is right.

Senator Walker: It is really a marine mortgage you are talking about.

Mr. Renwick: Yes.

The Chairman: Shall we report the bill without amendment?

Hon. Senators: Agreed.

The committee adjourned.



First Session—Twenty-eighth Parliament
1968-69

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE
ON
BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 49

AUG - 5 1969

UNIVERSITY OF TORONTO

TUESDAY, JUNE 24th, 1969

WEDNESDAY, JUNE 25th, 1969

Second and Final Proceedings on Bill C-191,

intituled:

"An Act to amend the Income Tax Act".

WITNESSES:

Department of Finance: The Honourable E. J. Benson, Minister. J. R. Brown, Senior Tax Adviser. F. R. Irwin, Director, Tax Policy Division.
The Canadian Life Insurance Association: J. A. Tuck, Managing Director. E. G. Schafer, President. A. H. Lemmon, Chairman, Committee on Income Tax. K. R. MacGregor, Immediate Past President.

REPORT OF THE COMMITTEE

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Leonard
Aseltine	Desruisseaux	Macnaughton
Beaubien	Gélinas	Molson
Benidickson	Giguère	Phillips (<i>Rigaud</i>)
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Isnor	Welch
Connolly (<i>Ottawa West</i>)	Kinley	White
Cook	Lang	Willis—(30)

Ex officio members: Flynn and Martin

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, June 17, 1969:

"Pursuant to Order, the Senate resumed the debate on the motion of the Honourable Senator Hayden, seconded by the Honourable Senator Denis, P.C., for the second reading of the Bill C-191, intituled: "An Act to amend the Income Tax Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative, on division.

The Bill was then read the second time, on division.

The Honourable Senator Martin, P.C., moved, seconded by the Honourable Senator McDonald, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative".

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

TUESDAY, June 24th, 1969.
(54)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met at 3.00 p.m. to *resume* consideration of:

Bill C-191, "An Act to amend the Income Tax Act".

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien, Benidickson, Carter, Choquette, Connolly (*Ottawa West*), Cook, Croll, Gelinas, Isnor, Leonard and Phillips (*Rigaud*).—(13)

In attendance: E. Russell Hopkins, Law Clerk; and Parliamentary Counsel.

The following witnesses were heard:

Department of Finance:

The Honourable E. J. Benson, Minister.

J. R. Brown, Senior Tax Advisor.

Canadian Life Insurance Association:

J. A. Tuck, Managing Director.

E. G. Schafer, President.

A. H. Lemmon, Chairman, Committee on Income Tax.

K. R. MacGregor, Immediate Past President.

At 5.50 p.m. the Committee adjourned further consideration of the said Bill.

WEDNESDAY, June 25th, 1969.
(55)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met at 9.30 a.m. to *resume* consideration of **Bill C-191**.

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Gelinas, Isnor, Kinley, Phillips (*Rigaud*) and Thorvaldson.—(13)

Present, but not of the Committee: The Honourable Senator Langlois.—(1)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The following witnesses were heard:

Department of Finance:

J. R. Brown, Senior Tax Adviser.

F. R. Irwin, Director, Tax Policy Division.

At 10.15 a.m. the Committee deferred consideration of the said Bill until 12.00 noon this day, the Committee to meet at that time *in camera*.

At 12.00 Noon the Committee *resumed* consideration of Bill C-191, *in camera*.

A quorum being present, the Committee discussed the form of the Report of the Committee and after further consideration it was *Resolved* that the Committee recommend that the said Bill be not amended at this time, but that the Report contain certain observations and recommendations.

NOTE: (The full text of the Report appears by reference to the Report of the Committee immediately following these Minutes.)

After discussion and upon motion, it was:

Resolved:—That the account submitted by the firm of Smith, Davis, barristers &c., for the services rendered by James K. Hugessen, Special Counsel to the Committee, be approved.

At 1.50 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, June 25th, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill C-191, intituled: "An Act to amend the Income Tax Act", has in obedience to the order of reference of June 17th, 1969, examined the said Bill and now reports as follows:

Your Committee was impressed with the views expressed by The Canadian Life Insurance Association on behalf of that industry, more particularly with respect to the subject matter of Contingency Reserve and Surplus. As relief with respect to the latter could be granted to the industry by Order-in-Council under the proposed law, your Committee drew the attention of the Minister of Finance to such representations. The Minister considered the matter but, before the Committee, he stated his unwillingness to grant the relief requested which was that the amount for Contingency Reserve be allowed to be deducted before the incidence of taxation applied to business incomes.

In reply to the Minister's statement the industry stressed most emphatically that such Reserve and Surplus are absolutely essential for the protection of their policyholders. The industry emphasized that its request was in accordance with its settled practice of maintaining adequate Contingency Reserves and such practice, in no small degree contributed to the financial strength of the industry and enabled it to withstand adverse economic cycles.

In the hope that the Minister will give further and favourable consideration to this request of the Life Insurance industry your Committee is disinclined to recommend any amendment at this time.

Parliamentary procedure on Budget matters gave no opportunity to the Life Insurance Companies representing eleven million policyholders to submit their views to an appropriate committee until the Bill reached the Senate even though the present legislation involves a radical departure from our taxation structure.

This experience prompts the Standing Senate Committee on Banking, Trade and Commerce to suggest that revised procedures be considered in the future, at least in instances where major changes are contemplated, so that interested parties and the public may have such opportunity.

Respectfully submitted,

SALTER A. HAYDEN,
Chairman.

THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

EVIDENCE

Ottawa, Tuesday, June 24, 1969.

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-191, to amend the Income Tax Act, met this day at 3.00 p.m. to give further consideration to the bill.

Senator Salter A. Hayden (Chairman) in the Chair.

The Chairman: I call the meeting to order. We will continue our consideration of Bill C-191. The Minister is with us, but he is operating under certain time restraints, in as much as he has to get away by somewhere between 4 and 4.30 p.m. He has a statement and, to the extent that time will permit him, he will be available for questions arising out of that statement. Are you ready to proceed in that fashion?

Hon. Senators: Agreed.

Honourable E. J. Benson, Minister of Finance and Receiver General: Mr. Chairman and honourable senators, I felt that I should appear before you today in order to speak to the questions of policy concerning the taxes applied by Bill C-191 to life insurance companies and, indirectly, to investment income derived by policyholders from their life insurance policies. I will not endeavour to explain the voluminous details of this bill. I think it is better for Mr. Brown to do that on my behalf, although I can assure you at this stage that I understand what is in it, having gone through a very long procedure. However, the Canadian Life Insurance Association has expressed its views to the committee about the policies in this bill to which I think the Minister should reply as promptly as possible.

These provisions to tax insurance companies and policyholders are an important element in our tax reform program. In my opinion, they are long overdue. Neither the profits of the companies nor the investment income derived by policyholders in one way or

another from insurance policies have been taxed in the past except to a minor and quite inadequate degree. This has left a considerable inequity in the treatment of insurance companies compared to other companies and in the treatment of the returns from investment in insurance policies as compared with other forms of savings. To the correction of this problem we have devoted a great deal of work in the past eight months which is reflected in the bill presently before you. We have proceeded with care because we realized that this was a difficult though necessary task, and we had to make sure that we took adequately into account the peculiar nature of this business and did not seriously damage an industry which has served Canada well both in insuring Canadians and in carrying on business in other countries.

I think that we have worked out a logical and equitable system for accomplishing these objectives. However, its introduction is a substantial change, imposing a sudden burden upon the industry. Perhaps it is inevitable that those engaged in the industry should have doubts about their ability to carry on their business successfully while absorbing this major new burden of taxation.

I have reached the conclusion after much study of this situation that the industry can meet this new burden. It is a profitable industry despite the competition of other savings institutions. The changes in our regulatory legislation in recent years, including those presently before Parliament which were approved by the Senate, will enable life insurance companies to have greater flexibility both in the types of plans they sell and in the investments they may make. This should enable them to compete successfully with other institutions, including mutual funds. The tax legislation now before the committee will make that competition take place on more even terms than it would be if we did not have a logical system of taxation apply to life insurance.

One of the basic questions raised by the Life Insurance Association has been whether it is right at this time to place a tax on savings. I think the answer is clearly yes. As a major borrower, indeed I suppose the largest borrower in the country when refunding is included, I am vividly aware of the difficulties in the capital markets at this time. However, we cannot defer indefinitely our tax reform program and we cannot carry it out properly unless we do include the taxation of life insurance companies and proceeds. I have taken into account the effects of this upon the flow of savings, as I indicated in my budget statement in October. I said then that on balance the gain in revenue to the federal government and to the provinces and the gain in equity in treating different channels of savings more fairly, would outweigh the disadvantages of introducing this reform at this time. I still believe that to be the case. Our rate of saving in the country is high. The main problem is to get it channelled properly into fixed money obligations as well as into equities, which are all the fashion at the present time. In fact the great bulk of savings does flow into fixed money obligations and will I think continue to do so although this involves high interest rates to compensate for the risks of inflation.

The government is already doing much to facilitate savings both by tax measures and other measures.

Insofar as the income tax system itself is concerned, it provides a major exemption for savings in the form of pension funds, and in the form of registered retirement savings plans, introduced some years ago. This enables both employees and the self-employed to accumulate substantial sums for their retirement under arrangements by which up to reasonable limits they can deduct the amounts put into such funds from their incomes, accumulate the investment return on those funds free of tax, and then pay tax on the proceeds during retirement when their marginal tax rates are likely to be lower. The advantage of thus deferring tax is in itself a very substantial one, as the Royal Commission on Taxation has demonstrated.

I feel that this arrangement for pension plans and registered retirement savings plans, in both of which the life insurance companies can and do participate, is the fair way and sensible way of making tax provision for encouraging and facilitating savings. I think it is a better way than exempting insurance

companies from taxation or giving special treatment for premiums paid on insurance policies.

I should note too that the government now as custodian of the funds of the Canada Pension Plan is accumulating on behalf of Canadians very large amounts of savings each year and investing them in provincial securities of one kind or another—investments which finance not only provincial needs but those of educational institutions and municipalities. This is where the need for savings is most urgent at present, bearing in mind the views that the market takes about long term fixed interest obligations.

Thirdly, the government now is operating on a substantial budgetary surplus for economic reasons, as I explained in the budget of June 3rd, and in order that we can keep down our demands on the capital market. Insofar as the revenue derived from insurance companies increases that surplus, it does directly assist in enabling the needs for capital funds from the market to be reduced—in so far, at least, as they apply to the federal Government. In this sense it can be regarded as helping us to finance for example the very substantial requirements of the Central Mortgage and Housing Corporation for funds for housing of various types.

All taxes hit savings in some degree. Who of us would not save more if we did not have to pay taxes whether they be income taxes or taxes on our purchases? Of course some taxes hit savings more directly than others. I would not deny that the taxes on insurance companies will bear more directly on savings than many other taxes, but the difference is one of degree, not one of principle. We have taken it into account in making our proposals. We should also take it into account in our future budgeting and fiscal policy.

I turn now to deal with the criticisms that have been made of these taxes on life insurance. I will not try to deal with all the points raised by the Canadian Life Insurance Association or those representing it but only with the central issues and the major criticisms. Smaller points may be adjusted in future amendments to the Income Tax Act in the light of experience in the administration and in the problems of compliance under actual conditions.

There are three elements in our plan and the criticism largely attaches to the third of these.

The first element is the tax on the withdrawal of the proceeds of an insurance policy by the policyholder. The net gain on the policy is to be taxed as part of his personal income. There has been no significant argument about this element either in its conception or its workability. The companies did ask us for more time to prepare for this so that their policyholders would be better able to understand it and to have the data necessary to calculate their tax. Such deferral for a year was agreed, and the nature of the arrangement is such that the cost will fall mainly upon the companies as the amount subject to this tax is set off against the investment income on which the companies are taxed.

The second element in the plan is the tax on the investment income of the companies. This is intended to be an indirect tax on the income paid or accruing to the policyholders. As I said in the budget speech, the Royal Commission proposed valuing these elements of investment income each year whether or not received directly by the policyholder, and taxing them to him. We have worked out what I think is a much simpler and more practical method. I am glad to see that the Life Insurance Association indicates that they are not unmindful of the fact that the government has acceded to their suggestion of avoiding what they have called an administrative nightmare for policyholders.

This indirect tax on the policyholders is calculated at a flat rate of 15 percent which is a traditional rate in our income tax arrangements where we have withholding taxes and similar taxes on the source of income without being able to include it in the normal income tax at graduated rates. The rate is not high in relation to the graduated rates of personal income tax. If and when the policyholder draws out the proceeds of his policy himself he then has to pay tax at the appropriate graduated rate and the amount of income subject to this 15 percent tax in the hands of the company is reduced accordingly. There is, however, no adjustment to higher rates if the life insured dies and death benefits are paid.

The complaints of the industry on this investment income tax are essentially that the deduction for expenses and the tax credit for the provincial premium tax should be larger, and should be related to the kind of business done by the company.

In fact the government has gone a long way to meet the initial criticisms made by the industry of this tax. We have included a sub-

stantial amount of their administration and selling expenses in determining investment income attributable to policyholders. It is not possible to make any thoroughly objective and accurate appraisal of what should be allowed. The problem is to get some reasonable allocation of the expenses and of the premiums that should be attributable to the savings element in policies rather than to the essentially insurance element. This savings element depends on the nature of the policy in question, on the age of the life insured, and on other factors. The mix of policies varies as between companies and over time. To calculate the savings elements for various policies or even various classes of policies for each company would be very complex and expensive. Any one rule is bound to be somewhat arbitrary. We thought, and I believe the companies think, that some simplicity is essential.

Our examination of the savings element in various types of outstanding policies and of the mixes of policies led us to believe that the appropriate average ratio would lie somewhere between 45 and 55 percent. This led us to choose the round figure of 50 percent. The companies believe it is low but have not been able to convince us that that was the case. Moreover, the figure of 50 percent of the expenses attributed to the savings element results in a ratio of expenses to investment income that is considerably higher than the expense ratio which the life insurance companies charge on deposit administration accounts and is considerably higher than the charges which trust companies and mutual funds make for the management of funds left with them for investment. Moreover, an examination of the expenses of banks indicates that for every \$11 of expense other than those directly related to the management of loans and investments the banks receive about \$5 in service charges. This would suggest that only about 55 per cent of the general and selling expenses of the banks reduced the investment income available to depositors. All in all I feel that this 50 per cent figure is a reasonable one for us to start with. Over the years it may be possible to get a more accurate determination of what is ultimately reasonable.

I would also be prepared to consider later any logical formula that the Life Insurance Association could suggest that produces a more equitable treatment of the differing mix of savings and insurance elements in the business of individual companies.

In deciding how much of the provincial tax of 2 per cent on insurance premiums should be allowed as an offset against our tax we have also used this 50 per cent formula. It too is subject to the same sort of arguments and defence as applies in the case of allocating expenses. We came to the conclusion that in putting the companies on a fair competitive basis with other institutions attracting and investing savings we should permit a credit for this premium tax insofar as it applies to the savings element in the policies. This provincial tax is of the nature of a sales tax which is not borne by other forms of savings but is borne by other forms of insurance.

The main complaints of the industry relate to the tax on their business income and particularly to the weight of the tax. Forecasting the weight of this tax is complicated because policy dividends are deducted, and properly deducted, in determining the business income of the company as distinct from the income flowing to its policyholders. As a result, if the company reduces its policy dividends in an effort to pass the tax on to policy holders, then its taxable income is increased and the overall weight of the taxes on the company as such is increased.

In general, the decision of the companies in regard to policy dividends will substantially affect the weight of the tax. The quantitative significance of these decisions is exemplified in the statement by the Life Insurance Association in their first paragraph under the heading "Weight of Tax". Of course, one could say that much the same would be true for companies in other businesses if they were able to pass on their income taxes to their customers. In so far as they succeeded in doing so they would increase their taxable income and thus would pay more tax.

What the life insurance companies do in this regard is of course up to them, subject to the restraints of competition and their own views as to the reaction of their policyholders and prospective purchasers of new policies. I did indicate in my budget speech of October 22 that I thought the tax on investment income might cause a moderate reduction in the policy dividends to be paid in future on many outstanding participating policies. I also indicated that in my view the taxes would reduce the annual accumulation of income in general contingency reserves of the life insurance industry. I still believe that these are the most likely effects.

The Association said in its statement—and a number of its representatives even more eloquently have said—that in their view there must be an accumulation of surplus and contingency reserves and they argue that the tax law should make provision for these. They state that these surplus and contingency reserves are absolutely essential for the protection of policyholders.

We do not provide in the income tax law for general contingency reserves of this kind for any business no matter what it is. We do not regard amounts required to build and maintain such reserves as expenses inherent in the provision of guaranteed insurance benefits, as are the expenses we have allowed.

Representatives of the industry have had many conversations with senior officers of the department and with myself as to the necessity for these before tax contingency reserves, particularly at the present time. They have not convinced us that we should allow more than is already in the bill and in the draft regulations that were made public. We have provided in the draft regulations for actuarial reserves for tax purposes on the "net level premium" basis, which permits higher actuarial reserves than the "Canadian modified" basis which is permitted by the regulations administered by the Superintendent of Insurance. On one balanced mature portfolio of policies which we had examined it was estimated that the net level premium reserves would total about \$20 million compared with the Canadian modified reserves at \$18 million. This is a greater margin than the 5 per cent proposed by the association in their brief. Of course it must be recognized that many of the companies already use in their statements the net level premium reserves, particularly when that is necessary to cover cash surrender values, and therefore do not show the difference in their surplus. It does indicate that the allowance for actuarial reserves has not in all cases been held to the minimum level permitted by the regulatory authorities.

In exploring this matter we asked the companies what kind of general contingencies had to be covered by these surpluses that they felt should be permitted on a tax free basis. They referred to adverse mortality experience, but the only example that they gave us was the flu epidemic of 1918-19, and we found on inquiry that this did not produce a mortality experience in either year which was worse than that provided in the mortality

tables. The second type of contingency was that the companies would be unable to earn the rates of return to which they are committed in the terms of their policies. In establishing the actuarial reserves we are permitting them to use reserves based on the interest rates implicit in their cash surrender values. These rates are somewhat lower, and therefore involve higher reserves, than those that are implicit in the premiums that the companies themselves charge for insurance policies. Similarly in annuities the interest rate to be used in establishing reserves is to be prescribed by formula to be at least one per cent lower than the interest rate implicit in the premiums for annuities. Thus there will be tax deductible reserves to provide protection against an adverse swing to interest rates of some significant proportions. Should interest rates decline again to the low level of the 'thirties and 'forties the situation would be different, but I feel that the companies should be able to accumulate enough surplus on a tax-paid basis to meet such a long term problem.

A third contingency to which the companies referred was that policyholders might surrender their policies and the companies would have to sell securities at a loss to meet these surrender values. Our examination of this did not lead us to feel that it justified what was proposed. The companies build surrender charges into their table of guaranteed surrender values in the case of early surrenders. This gives them a cushion against losses they may incur through the sale of securities to meet the surrender claims. In addition the system permits them to deduct an investment reserve of $1\frac{1}{2}$ per cent of the book value of eligible assets. This reserve should enable them to absorb most of the losses likely to be incurred by any reasonable run of surrenders. Moreover, as I shall indicate in a moment, they are investing their current receipts at much higher interest rates than those implicit in the cash surrender values, so that their position should improve.

The fourth contingency that was mentioned to us was that operating expenses may well be higher than those contemplated when the companies entered into their contracts. There seems little doubt that operating expenses are more likely to go up than down. However, the bulk of the selling expenses connected with issuing a policy are incurred, and will be deducted for tax purposes, in the first few years of the policy's life, whereas the premium usually remains constant throughout the

life of the policy. As a result, there is rather more of the premium available in later years to meet other operating expenses.

All of this is not to suggest that companies should not endeavor to build surpluses. A particular company can run into a combination of circumstances that are even more adverse than those covered by the protection I have outlined. Indeed, I expect the insurance companies to maintain free surpluses or contingency reserves, just as all businesses must provide a cushion against a series of rainy days out of their after tax income.

On the whole, however, we believe that the companies are being permitted to compute their incomes in accordance with rules that are at least as generous as those which apply to their competitors and that any further reserve strength needed by the companies should be provided out of after tax profits.

It must be borne in mind that at present the companies' actuarial reserves are being calculated at rates of interest of 3 or $3\frac{1}{2}$ per cent on most policies. Already their average rate of interest earned on their investment has topped 6 per cent and it may be expected to increase in the near term future. For example, they are currently able to invest their earnings at 9 per cent in insured mortgages and at correspondingly high rates for bonds and other securities. I must say that I am convinced that with interest rates at current levels the application of the tax should not produce an excessive shock.

I should also like to point out that over the period of ten years from 1957 to 1967 the ratio of surplus to total liabilities on the world business of Canadian life insurance companies as reported by the Superintendent of Insurance has risen from 6 per cent to 7.6 per cent. During the year 1967 the ratio of surplus to total liabilities increased from 7.4 per cent to 7.6 per cent. My belief, after looking over the results for that year, is that many of the companies could have paid taxes comparable to those proposed in this Bill, they could have maintained their dividend scales at the rates which were in effect, and still they could have added to their surpluses or their contingent reserves an amount equal to about 5 per cent of the increase in their total liabilities.

I should like to note too that policy dividends as a proportion of total revenue have been increasing steadily over the past ten years and are now above 10 per cent. Given the high rates at which funds currently can

be invested, I would have thought that policy dividends could again be increased in future were it not for the tax. Consequently, merely holding them steady would provide some of the funds required to meet the investment income tax.

These are the considerations that have led me not to put into the bill or the regulations any provision for general contingency reserves as an expense in determining taxable income. I trust that they will commend themselves to the Senate in its consideration of this matter.

This is the main point which was urged by the association in regard to the determination of their tax on business income. The second most important one relates to the treatment of dividends received from taxable Canadian corporations. Such dividends are tax free when received by normal corporations. However, they are not tax free when received by mutual funds and comparable investment companies to be passed on to those investing in them. In the case of banks and trust companies the income from dividends is so small that we have not attempted to qualify the normal treatment, although if it should become large or if it should be regarded as a matter of principle we could treat it in a way similar to what we have proposed for the life insurance companies.

A large part of the investment income of life insurance companies is being paid to, or accrued for, the policyholders. This is what we are subjecting to the low flat tax rate. On that portion we are proposing to give a dividend tax credit for dividends from taxable Canadian corporations equivalent to that received by individuals. I think this is fair treatment for the policyholders. The balance of net dividends received flows to profits and will be exempt. We have to determine the portion of dividends received that should be attributed to policyholders and the portion attributed to profits. We do it by assuming that the portion of the profit of the companies that comes from dividends from Canadian companies is the same proportion as these dividends are of the total investment income.

Since dividends are now an important and increasing source of investment income to these companies and will undoubtedly be held out in future as an inducement for investment in life insurance policies, I think that this is a reasonable means of treating them. We shall consider the treatment of other investment companies in relation to what we have prov-

ided for insurance companies as part of our general review of the income tax law that is being carried out this year.

I have noted a number of the minor points and it is possible that some of these can be taken up in discussion. One of them to which some attention was paid the other night was the alleged severe impact on some of the medium and smaller life companies because capital improvements are only taken into account for depreciation if they are in excess of \$100,000. Alternative means of dealing with this would have been possible but it was part of an overall complicated arrangement for dealing with the initial capital costs to be allowed in calculating income. These are such that no taxes will apply on any recapture of capital cost incurred in the past and written off to past years. Overall I think this capital cost arrangement is fair and even generous to the companies although it may not apply in the same proportion to all.

In regard to the last point made by the companies, the restriction on the losses on the sale of bonds held at the end of 1968, I should say that some safeguard of this kind was necessary or it would have been possible for the industry simply by switching bonds—that is, selling to one another—to have maintained the yield and the real values of their portfolios while taking book losses that would have eliminated their taxable income. The ten year spread was picked with an eye to the usual term of investments made by insurance companies. If a company did sell at a loss bonds held at the beginning of the taxable period and reinvested the proceeds, then that loss should serve to reduce the rate of return on the new investment and so bring it back to a rate comparable with that which would have been achieved had the company held on to the original bonds. Any period chosen for this purpose was bound to be somewhat arbitrary and I think this one is not unreasonable for these companies which are long term investors.

That concludes Mr. Chairman what I wish to say in answer to the various criticisms that were made. I think it is a good thing that your committee has provided an opportunity for the companies to state their anxieties, particularly about the weight of tax, and for me to indicate the reasons which have led me not to accede to all of their proposals. The industry undoubtedly faces major problems in adapting itself to this new tax regime and I have every sympathy for them in these

circumstances. As the minister responsible for the Department of Insurance, I have a very lively personal concern that we should not imperil the safety of the investments of policyholders or of the benefits to which their dependents would be entitled. I feel confident that these new tax arrangements will not imperil the safety of the industry.

I would like to add that the government is quite prepared to examine the working of this tax and its effect upon the industry after two or three years of experience of it, and to recommend such changes to Parliament as are warranted in the light of that experience. I think such an assurance will help the industry meet the problems of adjustment that it now faces.

Senator Croll: I gather you are for the bill?

Hon. Mr. Benson: Yes.

The Chairman: Yes, I would say this is a speech in favour of the bill. In accordance with our usual practice, the meeting is open for questions to the minister. What is your departure time?

Hon. Mr. Benson: I have to leave in about 15 minutes.

Senator Phillips (Rigaud): May I put one question to you. You indicated it was a good thing for this committee to listen to the representations of insurance companies. Would you like to express a view, having regard to this extraordinary change being made in the treatment of insurance companies, whether it would not have been desirable to follow the procedure in the other house, whereby a segment of the economy being subjected to taxation, more or less for the first time, would have had an opportunity to submit its representations, so that the public would appreciate the pros and cons of the case and not find themselves in a position like that of a committee of this Senate, which obviously is limited in that opportunity of suggesting relief, even though we may have such an impression, notwithstanding the very informative brief you have presented?

Hon. Mr. Benson: I am not particularly happy with the way budgetary measures are presently handled in the House of Commons.

When the rules were changed and all bills were referred to committees, the house in its wisdom maintained the rule that all budgetary measures must have clause by clause hearing in the house as such. I think a good

deal of time is wasted in the house in this way that could be better used in committees where people could make representations. But that, senator, was not of my choosing, it was a matter of rules that were adopted.

Senator Phillips (Rigaud): The reason for my suggestion is that, many years ago—I do not know whether I preceded the late Mr. Carter or followed him, as chairman of the Canadian Tax Foundation—and I speak as an individual now—I remember we took up the point that it might be desirable to follow the system in the United States whereby, before a tax is made effective, an opportunity would be given for amendments to the law being dealt with in committee.

I think that it would be inclined to moderate your thought, that due consideration would be given, say, after two or three years, if you would be inclined to make an observation that due consideration would be given to revision after one year. If you would be inclined to make the observation that, possibly as a result of a White Paper coming in, that a new system would be followed whereby those aggrieved would be given an opportunity to be heard in public, it might change the attitude of those being suddenly subjected to taxation.

Hon. Mr. Benson: I publicly stated that I did not like the present system of dealing with budgetary matters in Canada. I said this quite publicly. I think that, except for tax rates which have to be imposed as of a specific date, if we are going to have the control over the economy that the Americans do not have in their system, and except for rates where new items are being proposed, the Minister of Finance should have more opportunities for consultation with people, so that the changes could be referred for discussion, before being presented in a budget speech which places the Government in jeopardy if they are not passed. This would be very useful.

Indeed, this is exactly what I propose to do with respect to tax reform. I am going to produce the White Paper. I have clearly said that anything in the White Paper will be subject to change, if, indeed, we can be convinced that it should be changed.

I should, however, say in fairness here to my officials and perhaps to myself that we did have a great deal of consultation with the life insurance companies. As a matter of fact, I was under a good deal of criticism in the

house about the bill's being held up for so long, because we took eight months and spent all of it consulting with the insurance industry, listening to them and coming down with what in our opinion would be fair decisions.

Now, to deal with the second point, whether it will be subject to review in a year, may I say that tax measures are open every year, and our tax reform will be coming forward next year. If we were convinced that this was acting unfairly towards the insurance companies and we had the data to support this at that time, then of course it would be subject to review at that time.

I can assure you that I believe in the life insurance industry; I think it is good for Canada and good for Canadians. I also think that with this tax burden it can continue to prosper and to develop, or the tax would not have been increased.

Senator Phillips (Rigaud): Mr. Minister, before you leave, and I realize I am appropriating too much of your time, may I say that the industry at large, in their submission, frankly stated that as an important segment of our economy they realized that in due course they would be subject to taxation. Having regard to the present status of the bill they are very much concerned about this question of surpluses and contingency reserves. Before you leave would it be possible to obtain from you your views on the decision as reflected in this memorandum so that in our discussion with Mr. Brown we may explore the possibilities of further relief in the initial year.

Hon. Mr. Benson: I believe, senator, if you will read the brief very carefully that we indicate that in our opinion the insurance companies are well protected against their liabilities through their actuarial reserve—through the one and a half per cent reserve on investments which is similar to what the banks have. We believe that they are on an absolutely safe basis. If one assumes this, then I personally cannot see justification for allowing funds to accumulate free of tax in the insurance industry vis-a-vis the banks, or vis-a-vis any kind of business.

In any kind of operating business one has to accumulate profits after tax in order to support himself in the case of emergencies and I believe the insurance companies are quite capable of doing that. Indeed, I believe they will do it.

Senator Phillips (Rigaud): So that I do not subject myself to newspaper attention, Mr. Chairman, may I record that I am a director of an insurance company, although a small one.

The Chairman: It has been noted, senator.

Senator Benidickson: Mr. Minister, I have been following your address very carefully and I noticed that, although it did not affect the substance of your remarks, there were a few places where you made additions to what is contained in the prepared mimeographed statement provided to us. If I heard you correctly, in the first paragraph on page 15, in the last sentence of that paragraph you added the words "total investment income". Is there any significance in that addition?

Hon. Mr. Benson: No.

Senator Benidickson: Then on page 16, as I was trying to follow you attentively, I thought you added verbally some words on the commencement of the second paragraph. I believe you said it would have been possible for the industry simply by switching bonds, and you added here the words that were not in our text, "or selling to another". Is that significant?

Hon. Mr. Benson: No. Really, I think this protection had to be written in because it would be possible . . .

Senator Benidickson: But it is not in the text of June 24.

Hon. Mr. Benson: This just goes to show the mistake of distributing a text. Really, one could realize losses, you know, and reinvest the money and thus wipe out the entire profits of the insurance business, if one wanted to.

Senator Benidickson: Have you made other changes in the text?

Hon. Mr. Benson: No.

Senator Benidickson: Other than that, on occasion, you said, "In my opinion".

Hon. Mr. Benson: No, I made no other changes.

Senator Connolly (Ottawa West): Mr. Minister, last week we had a very thorough discussion of this bill with representatives of the industry. We made it crystal clear to them that in the Senate we are very severely circumscribed when it comes to a tax mea-

sure, because we can neither increase the incidence of a tax nor decrease it, because we might, in fact, upset the ways and means.

It seemed to me that the only place that there might be some consideration given was in clause 15 of the bill which adds section 68a to the act. In subsection (3) of that section, on page 17 of the bill, authority is given for the making of regulations with reference to this business of contingency reserves and surpluses.

The Chairman: Policy reserves.

Senator Connolly (Ottawa West): Yes, and surpluses. It was suggested that perhaps 6 per cent might be an appropriate figure and that, in any event, for every 1 per cent there would be \$1½ million less tax.

In considering the amount of money that was being expected to be realized from this industry, the estimates varied from \$95 million to \$135 million.

Would a 3 per cent allowance, which would have come to about \$4½ million on the basis of the figures given to us, make all that difference in your estimate of what your budgetary surplus might be?

Hon. Mr. Benson: Well, Senator Connolly, this, to me, is a matter of principle. It is not a matter of the amount of money involved. I believe that every company in Canada should have the opportunity, in constructing its balance sheet and making out its financial accounts, to provide for all its liabilities. I believe that funds beyond those necessary to provide for the liabilities of the company should be provided out of tax paid money rather than as a deduction before taxes. This applies in a manufacturing company, in a bank, in trust companies or whatever it may happen to be. If one wants to accumulate funds, whether it be in the form of a cushion for the business, or whether it be to expand from within in the case of a manufacturing business, it must be done out of after tax dollars rather than as a deduction before the determination of tax.

If I allowed a general contingency reserve for insurance companies, there would be great pressure on the Government to allow it for all sorts of businesses. You would then have arguments as to what amount of contingency reserves would be just for one kind of company and what amount for another kind and so on. Basically, it is not a matter of the money involved—\$4 or \$5 million or whatever

it may be. It is a matter of principle. If it is for \$5 million out of \$100 million, that means it would cost 4 or 5 million dollars to the insurance companies, but they can still provide funds for the contingencies out of income.

Senator Connolly (Ottawa West): On the present principle, as I recall the arguments made by the representatives of the insurance companies, they said that there are times when this contingency reserve is of great importance, for example in times of adverse economic conditions and situations of that kind. There are other times when individual companies might become weakened as a result of almost any kind of cause, perhaps mismanagement or some such reason, and they emphasized then the importance of having a surer source of reserves from tax resources to meet different types of contingencies in the interests of an industry that is designed for the protection of an individual. I think that is the way the argument ran, and it seemed to me they did talk about the question of amount which they considered significant, and I thought it was significant to them and I think on that point the Minister agreed.

The Chairman: I think the statement went something like this; that policy reserves are determined under this bill by the companies and I would assume also reasonably closely by the superintendent of insurance on the basis of mortality tables and interest earnings and expenses. Then the question is; are there elements in the insurance business that would not be reflected adequately in all the circumstances by this measure for determination of actuarial reserves and saying that is what you can get as a policy reserve? The aspect of it that seems to hit in that way is the duration of many of the liabilities that are undertaken by life insurance companies and the areas where they might be affected in the value of assets and in mortality tables over long periods of time. It might be that for some time interest and expenses would be as important, although because of the increase in interest earnings may more or less to this date balance out the expenses, but there may come a time when expenses will go on and the interest will go down.

The question arises whether in all those circumstances there should be an element in the policy reserve that is a plus with something in addition to what you would call the actuarial calculation or policy reserve according to those factors; and the insurance compa-

nies thought there should be, because I understand they have been carrying on their business in that fashion. Of course there was no tax problem of that kind in that case, but I think they have gone on the basis of 6 per cent of the increase in actuarial reserves in a year. Whether the 6 per cent is a calculated figure or is one that is an informed guess, such as the 50 per cent and some of your figures in this bill, would depend upon a reasonable consideration of all the different factors at the time. On this basis they may have made a reasonable stab as to what the amount will be. It has always struck me that there is some element there. How does it translate? The Minister says there will be enough in surplus after paying the taxes to deal with these situations. Obviously there will be less money because if you take \$1 and pay 52 cents in tax, you will have 48 cents left whereas before you had the whole dollar.

I am not saying there should not be corporate tax on profits, but it is a question of what, if any, additional amount should be deducted or should be set up in the form of contingency reserve or anything else before you have the amount subject to full corporate rates, and the practice of the insurance companies is that they have made use of a 6 per cent factor, an assessment that they felt was reasonable.

The Minister says they will have lots of money afterwards. I would say from what the witnesses said the other night that they need it against the potential contingencies that may occur. Who can speculate as far ahead as these contracts go as to what the situation may be? It is not as though the amount that went into the contingency reserve would not attract any tax in those circumstances; it would attract the 15 per cent. What we are really talking about is whether there is an element there which would take care of this projected situation in the future which may or may not occur, but you have to contemplate it; it is good insurance practice to contemplate it.

Senator Connolly (Ottawa West): Going back again to the evidence we had the other night, first of all we were told that to bring a company back that was in difficulties is almost an impossibility. I think the superintendent would probably agree with that. It would take a great deal of work and sometimes might mean the company being taken over by another company. But I think looking at it realistically if any weight is to be

given to the evidence we had the other night, the only place the Senate could give it would be in attempting to persuade the Minister and the officials to do it through the regulations. Perhaps if they do not do it now, in the course of time and as a result of their experience they will see that it is desirable to make allowances along the lines that was suggested by the spokesmen for the companies the other night.

Hon. Mr. Benson: It really is a matter to be dealt with by regulation and this is subject to the government doing it without going back to the House of Commons. I should like to say, of course, that I have great respect for the views of the insurance companies. We have a sincere and honest difference of opinion in this regard. We do not question their actuarial reserves. Indeed we have indicated that they can be calculated on a fairly generous basis. I believe the companies should be able to provide it in determining their income and their liabilities, but the point on which we differ, and I have said it is an honest difference of opinion—I have my opinion and the insurance industry has theirs—is that beyond this provision for liabilities which one can foresee, any provision must be made out of tax paid money from the insurance industry the same as it has to be done by any other industry. It is true they are in long-term contracts and they can go through all sorts of difficulties over a long period of time. They make a contract, somebody dies 70 years later and they have to pay. Nevertheless, I think this sort of liability can be provided for in their actuarial reserves and, indeed, in the mortality tables, and I took this sort of thing into account.

Senator Connolly (Ottawa West): Your hands are free in the light of the fact you can act.

Hon. Mr. Benson: Yes, my hands are free, but I would not want to encourage anyone to think I would act because it would be dishonest, and under present persuasion, at least, I think I cannot take the step of allowing a reserve for general contingencies in the specific reserves allowed to companies in their financial statements.

The Chairman: There are two things I wish to draw to your attention. The first is that if companies increased their policy dividends the tax returns would be less and the surplus would be less, and your corporate tax return would yield that money. Secondly, if the

Superintendent of Insurance decides in his study of a particular company that he is not satisfied in the circumstances that the reserves which are deductible before arriving at a taxable income are adequate, he is not tied to anything provided in this bill. He may then say what it is that he wants, in which event the company would then have to provide additional reserves out of tax-paid surplus.

Hon. Mr. Benson: No, if they provided the additional reserves to provide for their mortality or their actuarial reserves were not taken into account in calculating it.

The Chairman: That is new to me. I do not think so.

Hon. Mr. Benson: I am sorry. Maybe I could clear this up. If the Superintendent of Insurance decided that companies should have surplus accumulated beyond everything else that is provided, it would have to be surplus after tax.

The Chairman: That is right. So these are factors that present possibilities of having to use after-tax dollars, where you get less than 50 cents on the dollar for that purpose, and where the demande for it comes from another department of Government.

Senator Croll: Mr. Minister, in speaking about cushions that you provided you say:

In addition the system permits them to deduct an investment reserve of $1\frac{1}{2}$ per cent of the book value of eligible assets.

First, I want to make myself clear and, like Senator Phillips (Rigaud), I declare my interest too: I am a policyholder.

The Chairman: That is interest on principal, senator!

Senator Croll: Two questions arise out of that: What other business gets that consideration? And how do you justify it?

Hon. Mr. Benson: The banks have the same provision, and really in large organizations where it is impossible to determine losses across a wide field, we indicated the reserve we thought would be fair at $1\frac{1}{2}$ per cent. If experience proves this to be wrong, based on losses that occur, we can adjust it upwards. However, to sit down and go back to the banks and calculate the possibility of every loss on loans in the bank system would be

impossible. The royal commission commented that the reserves they were presently keeping were too high and we said we would allow them $1\frac{1}{2}$ per cent, which adjustment to this would provide us with \$50 million a year over 10 years.

Senator Croll: This is the banks?

Hon. Mr. Benson: Yes, and we have done the same thing here.

Senator Croll: That is your statistic?

Hon. Mr. Benson: Yes, it is such a big business that you have to take something; you cannot take a look at each individual item.

Senator Croll: No, I realize that.

Senator Benidickson: I just want to raise this point, Mr. Chairman, because I think it affects the minister. While I never attained the high office of Minister of Finance, both he and I know that we held the same office, that of Parliamentary Secretary to the Minister of Finance, and had occasion to explain bills of this kind to Senate committees.

The question I raise is something I think is of importance to the Senate. I find this very important amending bill of many pages without anything printed on the right-hand sheets. I am told that you should never ask a question if you do not know the answer to it, but I am wondering what would have happened if, in my time, we had come to the Senate without some explanatory notes on the right-hand side of the bill to indicate what the substantial changes were and why they were there. I think it is the minister's responsibility. We have a blank bill here, as far as the right-hand pages are concerned, and, as I say, this is a very important bill. In the case of small bills amending other statutes, we usually get explanatory notes. This is a very important bill and we get none.

Hon. Mr. Benson: They are in on first reading, and it is a measure of the regard people have for the intelligence of the Senate that after first reading, in subsequent readings, they remove the explanatory notes, but the first reading copy has them.

The Chairman: How much comes off taxes for that?

Senator Croll: Do you say that on second reading you do have explanatory notes on the right-hand side?

Hon. Mr. Benson: On first reading.

The Chairman: They were in the first reading bill.

Senator Benidickson: We did not get a copy of the bill until it had passed third reading.

The Chairman: They were printed with all the amendments, and there were substantial amendments, but the notes were left out.

Senator Croll: Senator Benidickson has brought this matter to my attention with regard to two or three other bills, and we discussed this two or three days ago and decided that you people were giving us short shrift.

Hon. Mr. Benson: There was no intention whatsoever to do it. Of course, I do not print the bill; this is under the control of the Senate.

The Chairman: No, this is a Commons bill.

Senator Benidickson: The Minister wants his bill to pass, and to pass with some alacrity even in this place. He could not do it even in the dying hours of the session, if we were difficult because he had not assisted in the passage of the bill by providing some explanatory notes. I call myself a layman.

Senator Connolly (Ottawa West): I do not think the Minister needs any defence, but there are very few ministers who have come before us and have given us a 17-page brief.

Hon. Mr. Benson: Mr. Brown is going to stay with you, and he is the real expert on this bill.

Senator Benidickson: I did not want to scold Mr. Brown or anyone else, because at a lower level I went before the Senate and I hope that when I was presenting amendments to the Income Tax Act I had explanatory notes on the right-hand side of the clauses.

Hon. Mr. Benson: If I ever get into the Senate I will raise the same fuss.

The Chairman: It is getting tougher all the time, Mr. Minister. The Minister now has to leave—

Senator Phillips (Rigaud): Before the Minister goes, Mr. Chairman, I am sure he would not mind my reading into the record, by way of summary of this extraordinarily able brief that he has presented, a statement of the Canadian Life Insurance Association on the basic point on which there is disagree-

ment. This summary of the subject matter "Contingency reserves and surplus" reads as follows:

A unique characteristic of life insurance is its long-term nature. Contracts often span half a century, through wars, recession, inflation and other contingencies. We have been disturbed at an apparent lack of recognition of the need for certain safety factors essential to such a business.

Before the Minister leaves, I am still hopeful that he will indicate to Mr. Brown some room for flexibility in dealing with the subject matter before this committee.

Hon. Mr. Benson: I should simply like to say that reserves for liabilities that are there are provided for in the legislation. I am quite willing to provide these kinds of reserves, but I just do not find general reserves for contingencies acceptable. This is an honest difference of opinion. Perhaps I am wrong, and perhaps the insurance companies are wrong, but I certainly believe that we cannot embark in Canada under our taxation system on a program in which 50 per cent of the reserves for general contingencies—that is, for expansion and various other things that are necessary in business—is provided by the treasury of Canada.

Senator Phillips (Rigaud): This is not the first case I have lost, Mr. Minister.

The Chairman: Thank you, Mr. Benson.

I do not see any value at this time in going through even the life insurance portion of the bill clause by clause. I think, rather, we should address ourselves to the points that give us particular concern, and the points that were developed by the insurance officers the other night. In that connection, Mr. Tuck has a memorandum from the Canadian Life Insurance Association dealing with the question of the need for contingency reserves. Perhaps copies of that memorandum should be distributed, and we will see how we can work on Mr. Brown.

Senator Croll: In understood that Senator Phillips read the guts of this, as he put it. Are there more guts than that which was read?

The Chairman: Everything I have seen in the memorandum is important in presenting the case of the companies.

Senator Croll: I have not read the memorandum. I just took Senator Phillips' word for it.

Mr. J. A. Tuck, Managing Director, Canadian Life Insurance Association: Mr. Chairman and honourable senators, this is an elaboration of one reference in our brief that the chairman suggested we might prepare. I have copies here for the members of the committee. Later, at an appropriate time, some of the company representatives can expand on it, if that is your wish.

Senator Benidickson: This is in the way of a rebuttal to a brief presented the other night?

Mr. Tuck: No, it is an elaboration of one of the points—

Senator Benidickson: You had not seen this statement of the minister before?

The Chairman: Senator Benidickson, I thought that this was a good time at which to bring this in because there are questions arising out of it that Mr. Brown might deal with. Are you going to read this, Mr. Tuck?

Mr. Tuck: Yes, if that is your wish, Mr. Chairman.

The Chairman: I think the main portion of it should be read. The basis of your calculations at the end might be omitted.

Mr. Tuck: Then perhaps I might run down the main points, and leave out the detail. Our letter is addressed to Senator Hayden, and it reads this way:

You asked for an elaboration of the reference to "a deduction of not less than five per cent of the increase in policy reserves" in the eighth and ninth lines of page 6 of the statement we presented to your committee last Wednesday evening.

Then we give a definition of "policy reserve", which is referred to in the bill and dealt with in the regulations.

A policy or actuarial reserve is the measure of the funds that a life insurance company must hold specifically to fulfil its policy obligations. Such funds are required by the federal Insurance Acts to be so calculated that funds equal to such reserves, together with future premiums and interest earnings, would enable the company to pay its claims with nothing

left over if assumptions as to mortality, investment earnings and expenses come to pass exactly.

Then, in the next paragraphs we deal with the need for contingency reserves and surplus.

The duration of a single contract may bridge many contingencies that could affect mortality, investment earnings and expense experience, but the company cannot alter its commitments. These commitments also include obligations to make policy loans or pay cash values on demand—even if so doing involves the liquidation of long term investments at a loss. Surplus and contingency reserves are necessary to provide a safety margin over and above policy reserves and other specified liabilities to enable the company to keep all of its promises under the worst conditions that can prevail. It is therefore essential for the company to add enough to surplus and contingency reserves each year to maintain them at an adequate level.

A life insurance company guarantees benefits in very long-term contracts—not infrequently extending more than 100 years from the original issue of a policy at a young age until final settlement by one of the instalment options payable to a younger beneficiary. The company and the supervisory authorities would be open to criticism if margins are not provided for unexpected risks over such a long period of time.

The company's surplus is not free surplus that can be paid out, but rather a special risk reserve for contingencies that cannot be pinpointed in advance: for example, the abuse of disability insurance which was treated by many during the depression as if it were unemployment insurance, the 1918-19 influenza epidemic, wars, and the Halifax disasters.

There is a footnote referring to the fact that many companies had to draw down surplus during 1918. I might emphasize, Mr. Chairman, that these are only illustrations of the use to which contingency reserves have had to be put. There have been other occasions when they have had to be drawn down.

These adverse occurrences have been infrequent in the past, but the possibility of their recurrence cannot be dismissed.

Nor can the possibility of accidental or intentional nuclear disasters in the future be dismissed.

On the other side of the balance sheet, a life insurance company has invested large amounts in long-term debt securities. Since bonds, other than Government bonds, must be valued at market value if this is less than book value, they are highly vulnerable to loss of statutory statement value as interest rates increase. A typical bond portfolio acquired over a period of years might right now have a statement value ten per cent to fifteen per cent below its amortized cost. Stock values can decline, and experience has shown that they can do so at a time of depressed bond values.

The Chairman: Yes, or yesterday.

Mr. Tuck: To continue:

If life insurance companies had not provided sufficient margins to offset losses in security values, some right now would be technically insolvent under the insurance law. Such margins are provided by contingency reserves and surplus. Again it is not free surplus that can be paid out, but rather a special risk reserve required to meet security market fluctuations which is a risk imposed on life insurance companies by insurance law.

We therefore believe that maintenance of a reasonable level of contingency reserves and surplus is a necessary element in the provision of guaranteed benefits just like the maintenance of policy reserves.

The Chairman: I think you can now move over to your proposals on the next page.

Mr. Tuck: Yes, and these, of course, deal only with the mechanism of how a change can be accomplished. At the bottom of the next page, under the heading "Our Proposal," we say:

Earlier we stated our belief that providing for a contingency reserve is just as necessary for companies guaranteeing future benefits in long-term life insurance contracts as providing for the increase in policy reserve.

An allowance for contingency reserves could be expressed in any one of a number of ways.

I will not deal with these in detail, but they are by reference to assets, by reference to

premiums, and by reference to policy reserves. We then end up by pointing out that our specific suggestion that there be a reserve allowance in terms of "policy reserves" has been framed in the light of the provisions of the bill, and the draft regulations.

Then, Mr. Chairman, we come to a very important point having to do with the fact that our suggestion does not involve no tax at all on these transfers to contingency reserves.

Under the two-phased life insurance tax system in the bill, allowing a contingency reserve deduction in the calculation of taxable income for the business income tax would not exempt the amount deducted from tax completely. The effective rate of tax on additions to such contingency reserves would be approximately 15 per cent. This comes about because of the interaction of the business income and investment taxes together with the adjustment of the cost of insurance to pass the investment tax on to the policyholder.

Of course, any addition a life company chose to make to contingency reserves and surplus over and above the allowance we have proposed would first be subject to the full corporate rate.

Also, any amounts going into either policy or contingency reserves would be released into income when no longer required to cover obligations to policyholders.

Senator Beaubien: I should like to ask a question of Mr. Brown. If a life insurance company has \$10 million book losses in Government of Canada bonds, can they if they want write off part or all of that?

Mr. J. R. Brown, Senior Tax Adviser, Department of Finance: As this law is written, on the sale.

Senator Beaubien: If they sell them?

Mr. Brown: Yes, sir.

Senator Beaubien: But they cannot buy another issue?

Mr. Brown: There is a special transitional arrangement whereby if they sell some of the bonds that were held when they started, the loss would come as a deduction over a period of years.

The Chairman: Ten years.

Mr. Brown: Ten years if they sell them in the first year, nine if they sell in the second, ending, if my quick mathematics are accurate, in 1978. We start this at a time when interest rates have been climbing, when most older bonds in particular are depressed, and some of the newer ones too, as you are well aware. Starting into a system like that you could argue that the insurance companies should start off with those low values, but that ignores the long-term nature of the life insurance industry. They bought those bonds for a six per cent or four per cent yield, maybe a seven per cent yield, and they were matching them up with liabilities, and consequently the Government felt that is the yield that ought to be brought to tax. They set their premiums on the higher rate.

On the other hand, if you look at the balance sheets now with these depressed values you will find a yield measured by reference to market value considerably higher than six per cent, seven per cent or four per cent yields, and the Government did not think it was appropriate to allow the loss right away of all of those depressed bonds. They thought it right to bring into tax only the yield they contracted for, the coupon yield, or if they bought at a bit of a discount a bit more than the coupon yield, but bring it in over the time they had contracted.

Senator Beaubien: So they pay tax on the coupon rate?

Mr. Brown: Effectively. If they bought at par they would pay tax on the coupon rate.

Senator Beaubien: If they sell the bonds they write off the losses over ten years?

Mr. Brown: Yes. The ten years is purely arbitrary. If they sell the bonds now we assume they will buy some other investment; maybe put it into a mortgage, and they will get some yield on the mortgage. After amortization over ten years the effective yield on that mortgage will be reduced back down to the coupon rate on the bond they sold.

Senator Beaubien: What about any other bonds they have, provincial or anything else?

Mr. Brown: The same treatment. Any bond they have bought in 1969, if it should move to a discount and they sell it, will be taken into account in the year in which they sell it.

Senator Benidickson: Government bond includes government at any level, municipal, provincial and federal?

Mr. Brown: This provision applies to all bonds.

The Chairman: And corporate bonds.

Mr. Brown: It applies to all bonds.

Senator Benidickson: Page 2 of the industry's brief refers to bonds other than government bonds in the second paragraph.

Mr. Brown: In the valuation of securities to apply the solvency test to insurance companies, I believe there is a distinction made between corporate bonds and government bonds. I believe Canadian companies are entitled to value certain government bonds at amortized values. If the market should be depressed temporarily, they are nevertheless entitled to treat these bonds at amortized value in determining whether they are a solvent company. The same is not true for corporate bonds. If corporate bonds that they hold go down, the companies have over a period of time, in accordance with the formula, to bring these bonds in their balance sheet down to market value, so the distinction is applied to the valuation for regulatory purposes, not that of taxes.

The Chairman: Are there any other questions to be addressed to Mr. Brown on contingency reserves and surpluses? I would expect that Mr. Brown might not depart from the text of what the minister has said, but I am willing to give him the opportunity! Having contingency reserves is an insurance practice of long standing, is it not?

Mr. Brown: That is true, sir. As you say, policy is a matter for ministers, and I think my minister dealt with perhaps that question primarily in his appearance here this afternoon.

The Chairman: I am not dealing with the question of policy, except policy reserves. I am dealing with the factual situation to see what your answer would be. It is a long standing practice of insurance companies.

Mr. Brown: Yes, it is, sir.

The Chairman: As you look at it, standing back over the years, it was a wise approach to this question?

Mr. Brown: Let me go further and say that the companies obviously have kept surpluses. The companies obviously ought to continue to keep surpluses. In fact, I am quite sure that Mr. Humphrys would get after them if they

did not keep surpluses. On the issue whether those surpluses should be out of before tax profits or after tax profits, I would point back to the statement made by my minister, which seems to me to cover all aspects of it and leaves me no room to elaborate.

The Chairman: Except that for the purpose of what you are saying you are enlarging your language. You are talking about surpluses, whether the surpluses should be first subjected to tax or not. I am not talking about the principle involved in this bill of taxing certain revenues of insurance companies, which we call surplus. I am talking about some additional deduction, or some additional thing you might take out of the amount before you subject the whole thing to corporate rates. That is the element I am talking about, and on that element you have agreed with me that insurance companies have always followed that practice and will undoubtedly continue to do so.

Mr. Brown: I think so.

The Chairman: And that Mr. Humphrys may whip them into line if they do not.

Mr. Brown: I have that feeling.

Senator Benidickson: Did the minister say that, so far as life insurance companies are related to what you call reserves, they are being brought into line with the inner reserves related to banks? Is there some attempt to go forward parallel with these things.

Mr. Brown: I think, Senator, that the closer parallel between those two has to do with the investment reserve that is being provided for insurance companies. As you know, the inner reserves of banks, so-called, have been computed basically by reference to the assets which they hold.

Senator Benidickson: And they were reduced by a recent budget.

Mr. Brown: Yes, in this same budget, senator, it was reported that the maximum amount of the banks reserves should be reduced to or towards the $1\frac{1}{2}$ per cent. It would be some years to get to the $1\frac{1}{2}$, of eligible assets, and a similar reserves based on eligible assets is being provided for the insurance companies.

The Chairman: Mr. Brown, the minister's statement and your reference to it now, puts us in the position where we may not be

able to dictate to you what you shall put in your regulations. But we are still left in the position, maybe within certain limits, where we can study the bill and see if there is any place in the bill where we can provide, by amendment, what we have been trying to accomplish by some redrafting of the regulations. Of course, that course is open to us.

It hardly seems advisable—Senator Connolly looks at me in a somewhat puzzled fashion—I would think it would be open to us, in the question of the regulations, to suggest—by amendment, to add a proviso, as to some minimal or basic statement in the question of a plus to actuarial reserves. I certainly do not think we are interfering with Ways and Means.

Senator Connolly (Ottawa West): I would think, Mr. Chairman, that if we cannot persuade the minister to exercise his discretion in framing the regulations along the lines proposed by the companies, that we would be pretty well precluded from interfering here.

The Chairman: Interfering—when you say “here”—in what?

Senator Connolly (Ottawa West): In the bill, with any of the tax proposals. We can defeat the bill, of course, but I do not think anyone wants to do that. It seems to me that our powers are pretty well restricted to the persuasion with respect to what he has in his regulation.

The Chairman: We cannot increase any rates.

Senator Connolly (Ottawa West): Nor could we decrease them, without interfering with Ways and Means.

The Chairman: And you say that we cannot decrease them, without interfering with Ways and Means. I think there are even limits in that.

Senator Croll: Are you not interfering with Ways and Means when you interfere with the tax contingency reserves? Are you not on even thinner ice than normally, when you take that attitude as to the powers you possess in the Senate?

The Chairman: That is not the question that I have been discussing.

Senator Croll: I thought it was the question . . .

The Chairman: The question is whether there is an element of reserve for which there

should be a reduction. In other words, in the provision for policy reserves there should be a factor which reflects the contingency situation.

Senator Croll: Has he not made an allowance for that factor?

The Chairman: He has not made an allowance for that factor and I do not think we are interfering with Ways and Means in that narrow field.

Senator Connolly (Ottawa West): If we could persuade the minister to exercise his discretion...

The Chairman: The question does not arise, if you persuade the minister to do that. I am talking about it obviously in that we have not persuaded him.

Senator Connolly (Ottawa West): We did ask him whether he would exercise his discretion and, if he did give the companies the relief they sought, whether we would be interfering with his budgeted surplus. I do not think he answered that question specifically.

The Chairman: However, I think this is a question we have to come back to later. I do not think we can argue it with Mr. Brown. He is not going to take part in it, and I would advise him not to take part in it, because we are getting into an area that he should not be concerned with.

Have we any other question to ask Mr. Brown on this particular point?

Senator Benidickson: In dealing with the bill in general, or in this particular.

The Chairman: I think it is clear what the bill is intended to cover. I do not think there can be any other doubt on that.

Remember, there are other phases of the bill dealing with the question of taxation of life insurance companies, and you may have some questions, and now is the time, if you have. This bill is divided into two sections, one is for life insurance companies and the other is the tax amendments. Mr. Brown is here to deal with both of those.

There was a question raised the other day. The minister dealt with it, after a fashion, in his statement here. That is the question of depreciable assets and the provision that you make with respect to write-off, and you say

that if there is an addition to the building—it is on page 63, clause 32 of the bill. At page 15 of the minister's statement.

In regard to the \$100,000 that you have provided there, in effect what you have said is that you have a capital improvement to some extent and it costs more than \$100,000 and it is made any time after the original structure and before this new law comes into force, it would be treated as a separate and distinct building, so that the capital cost allowances would be regained from that date.

Otherwise, is it your interpretation of the bill that, if the cost is less than \$100,000, that it become part of the original cost, even though it may have been constructed 20 years later and, if the original building has a 40-year life, it takes on a 40-year life for the purposes of capital cost allowances?

Mr. Brown: That is the way it would work, senator. It is part of an important problem of how to start capital cost allowances for companies which have not been in the tax field for 50 years.

One way might have been to recompute capital cost allowance as it would have been had they been in the tax field all along. In which case, one would have taken a straight line depreciation to the end of 1948—it may be at half rates, it may be at full rates, depending on whether the company had profits in that year—and then apply the declining balance system from that date and so bring out the capital cost allowance to the end of 1968, bear in mind that the declining balance method has higher rates than is suggested here on straight line. In fact, on balance, the cumulative provision for declining balance remains higher than the straight line depreciation for 32 years. Of course, our system only started in 1948, so that is only 21 years. So, buildings older than that would have had such a computation—I am speaking now only in the case of computations for the purpose of arriving at capital cost allowances on the original structure—of the undepreciated capital cost, meaning that any sale could result in recapturing allowances up to whatever the capital cost was.

As part of the arrangement to make the thing manageable—because no one wanted to reconstruct the depreciation schedules back for 20 years—we struck on this device of being able to look at the balance sheets of the companies, with limited exceptions and saying: "All right, you have had the building 10 years, 15 years, cumulative allowances will

be cost times the number of years, multiplied by 2½ per cent". We reduce it to capital cost. We say: "This is what you start with, just as if you bought it today for that purpose, and the only depreciation we will recapture is whatever is written after today."

Then the problem came up, what about major additions—air conditioning, the installation of elevators, and so on. It seemed that it might well be that the cost of some of these additions had been written off to expenses. Some of it might well have been capitalized in the company's accounts, but some might have been written off as current expenditures.

The question comes up of how much digging is one prepared to do; how much digging is it right to get the companies to do and how much checking. Well, the \$100,000 figure is admittedly arbitrary. In the first draft, the draft for first reading in the house, the \$100,000 only referred to an extension outside the walls of an existing building. The industry came and said, "Look, a lot of buildings have been air-conditioned. You can hardly even turn around without spending \$100,000. Shouldn't this include internal extensions or improvements as well?" So that at second reading an amendment was put in to that effect.

So there is no doubt that for some small buildings this may not be as generous as I should like to think it is for those with big buildings, but as the minister says, it is a fair deal over-all.

We might have been more precise; instead of having \$100,000 we might have had it as 10 per cent applied, no matter how large or how small the building.

The Chairman: As I see it, there are a few of the smaller companies to which \$100,000 would be an amount of some considerable importance.

Mr. Brown: I agree.

The Chairman: You might, alternatively, have provided an option to the effect that, if they did not want to accept this basis, they could go to the regular accounting basis.

Mr. Brown: That is true, senator. We could have provided that.

The Chairman: If you were thinking in terms of the smaller company and that it was important enough, that is what you might

have done. What you are really trying to do is to simplify the administration. Is that right?

Mr. Brown: That is right, senator, and compliance for the companies.

The Chairman: Yes.

Mr. Brown: This is where I say there were two points to it. One was to use the straight line, which is by and large beneficial; and the second was to deem that what we had got at the end was capital cost rather than undepreciated capital cost. There is a matter of recapture. The third point was to put in the \$100,000.

Two work one way and the third works the other. I readily agree that it works the other way more for the small companies than for the large companies.

The Chairman: On the question of recapture, coming to the starting point of January 1, 1969, with a fully depreciated building, then anything that you might realize on that building any time afterwards would come into income.

Mr. Brown: It would, you say?

The Chairman: Yes, wouldn't it?

Mr. Brown: No. We have deemed that the starting figure would be capital cost, which means that any proceeds in excess of that figure would not come into income.

The Chairman: What I said was that, if I fully depreciate by that time, then anything I receive afterwards...

Mr. Brown: Would be capital gains, senator, to the extent that it exceeded this beginning value of the building.

The Chairman: All right, I am glad to get that straight.

Now, are there any other questions that the committee wants to ask in relation to the life insurance business as dealt with in this bill? It would appear that the point uppermost in the presentation we received from the insurance companies was the question of contingency reserves, because there are other parts to this bill that we might deal with and, later, I intend to invite the representatives of the insurance companies to make whatever reply they wish to make on the minister's statement.

Senator Leonard: Mr. Chairman, on page 17 of the bill, subsection (3) (a) (i) there is power there in computing a life insured income to deduct such amounts in respect to policy reserves for the year of life insurance policies of a particular class as allowed by regulation. This seems to give power by regulation to provide the amount of those policy reserves. Now, if the companies in the past have felt that, over and above their method of calculating their policy reserves, it was necessary to have this contingency reserve out of surplus, then, in the light of the change in taxation, they might feel that they should strengthen their policy reserve. I presume there is power under this subsection to allow additional policy reserves or allow such policy reserves as they may feel necessary?

Mr. Brown: Senator, I think there is quite a wide scope for the Governor in Council to pass regulations which would permit various levels of policy reserves. The draft regulations have been made public to give an indication of what this would mean, because it is a very essential point to the taxation of life insurance companies. But I think it is only fair to say that the regulations are not meant to introduce a voluntary tax system which permits insurance companies to write any type of policy reserve they choose.

I believe that the regulations as presently drafted provide for fair policy reserves. Perhaps, in a few areas, they are a little on the generous side; perhaps in a few other areas the companies would say otherwise.

The Chairman: Senator Leonard, I was wondering whether you had thought that this provision to deal in this manner by regulation might really have the effect of imposing tax.

Senator Leonard: I should hope it would have the opposite effect.

The Chairman: Just looking at it, the Governor in Council passes a regulation and decides to allow certain actuarial reserves, but other reserves he does not include in the regulation. The effect is exposing more of it to tax.

Senator Leonard: I presume that happens in a great many tax statutes.

The Chairman: That would happen and would be perfectly all right where, in the statute, you have the deductions, but here you have only the authority for the deductions, but not for a specific amount.

Senator Leonard: Sooner or later the amounts of tax would be the same, just as in the case of depreciation allowances which are generally by regulation and depend upon the class of article and the length of its life and so on. I would think that this is along that line. But what I was really anxious to find out was whether there was sufficient in flexibility in this that I would expect that companies might have to change their method of calculation as a result of this tax, and justifiably so. And they would have to change their policy reserves or method of calculating their policy reserves. I presume the regulation will apply to all companies—that is to say, one company may not be able to take a too generous amount of reserve and another company may not take sufficient reserve. There may be some general rule with respect to the various kinds of policies, but within that scope, if the companies felt they really did need to strengthen their policy reserves in the light of this change, that could be taken into consideration in the regulation.

Mr. Brown: Senator, I think it is clear that there is quite a scope here for the Governor in Council to increase the policy reserves in ways which are beyond those that are in the draft now.

The Chairman: But the Minister said that he could not recommend it at this time, which means that even though the scope is there, this will not be done in the regulations.

Mr. Brown: Well, all that I might say that might be helpful is that it will not be the only industry where it is felt for regulatory purposes that they should have capital surplus, contingency reserve or whatever you like to call it, out of after-tax income. The Canadian general insurance companies are required by law to have assets equal to 115 per cent of their liabilities, and therefore they are required to keep a contingency reserve of 15 per cent of liabilities. This has to be provided out of after-tax profits. The trust and loan companies also have set ratios which limit the loans they can make by reference to the capital they can provide which means that they too are required to provide a cushion for the protection of their customers. This capital is in many instances provided out of after-tax profits. There are similar although not quite so forthright regulations for the banks. Many financial intermediaries are faced with a solvency test which they must meet in part out of after-tax profits. I do not want to get into a debate of the merits of this.

Senator Phillips (Rigaud): But, Mr. Brown, there are some judicial decisions which hold that the taxpayer is the best judge, as long as he is an honest taxpayer, as to the reserves he needs for the running of his business. That being so, and in view of the compliment that the Minister gave to the life companies that there is a legitimate difference of opinion, could this not be taken into consideration? This is not a group of taxpayers coming and trying to minimize legitimate taxation that should be rendered against them. Do you not think that there is something in this point where there is this honest difference of opinion on the part of a very important group of taxpayers that you might well apply the judicial decisions that in assessing or determining taxable income the view the taxpayer may be the best criterion as to what is taxable income.

Mr. Brown: It is dangerous for me to comment on judicial decisions in your company, senator, but would it be fair to say that those decisions have to do with reasonable amounts of expenses rather than reserves.

Senator Phillips (Rigaud): Expenses, and reserves in some instances. The general conception is that the taxpayer is the best judge under normal conditions, if he is an honest taxpayer, as to what this taxable income is. Here you have the Minister saying that this group of taxpayers have expressed an honest difference of opinion, and this is expressed also in the brief. They have said that in order to run their business properly and to protect their policyholders and so on that they run a risk of being reduced to determination of taxable income in excess of total profits in the normal sense of the term. That is a very important opinion expressed by a very important group of companies. So I request—and let me make it clear that I am not a spokesman for the insurance companies; I am speaking in my capacity as a senator—that you consider this as a very serious point. This is not a group of people coming to seek an amendment to a law on an *ad hoc* basis. You can see the reaction of this Senate group and you can see a sense of frustration in the interpretation of the present constitutional practice that not much can be done, and this is why this point is being pressed notwithstanding the consistent rebuffs we have been getting. Perhaps, in order not to be understood, I should not use the word rebuffs. Perhaps I should say “resistance”.

The Chairman: Senator Beaubien?

Senator Beaubien: On Page 17 of the bill, clause 3, we have the point that Senator Leonard is talking about. Does this mean he wants insurance companies to put away more than 1½ per cent tax free?

Mr. Brown: In this case it is not the Minister himself, it is the Governor in Council.

Senator Aseltine: In making the regulation.

The Chairman: The Governor in Council could in the regulations define the reserve.

Senator Beaubien: The Governor in Council then might let them put away the higher amount of the tax-free reserves.

The Chairman: But the Minister said he would not recommend it at this time.

Senator Connolly (Ottawa West): The Minister himself might say that the time could come or a situation could arise in which he could exercise power here to determine some of these reserves to be increased with tax-free money, not with tax paid money. He talked about tax paid money constantly because he intends to tax it at this time and apparently he is immovable on that.

Senator Leonard: In the final drafting of those regulations, I would like to suggest to Mr. Brown and through him to the Minister that they should take into account the great depreciation that has taken place in Dominion of Canada bonds and in fact in all government bonds, so that at this particular time the installation of a new tax and of a 1½ per cent allowance on investments is obviously considerably out of tune.

The Chairman: It is inadequate.

Senator Leonard: What I am really suggesting is that the allowance of policy reserves should take into account this degree of great depreciation on number 1 bonds.

The Chairman: Even if we are reporting the bill without amendment, Senator Leonard, you could always include recommendations along the line you are suggesting in the report.

Senator Leonard: I would be very happy if you would do that.

Mr. Brown: I will take your message back to the Minister.

Senator Connolly (Ottawa West): Obviously Mr. Brown, the Minister, and he says he was here the other night when we had representa-

tives of the industry, knows the very great concern there is on this point, and I think it will have to be watched and even if the Minister is adamant at this time, it seems to me that if the matter were drawn to his attention before the bill is open again, there might be a change.

The Chairman: I am going to suggest that while we are on the subject of life insurance rather than move to other parts of the bill we might now hear from the life insurance representatives if there are any representations they wish to make at this point. We are ready to hear any further representations or emphasis or reemphasis on what was said the other evening that the insurance representatives may wish to offer.

Mr. E. G. Schafer, President of the Canadian Life Assurance Association: I will call on Mr. Lemmon to speak on this.

Mr. A. H. Lemmon, Chairman, Special Committee on Federal Income Tax, Canadian Life Insurance Association: Thank you very much, Mr. Chairman and honourable senators, for the opportunity of speaking to you again.

I read with a great deal of interest the brief that was submitted by the Minister of Finance to the meeting here today, and I think it bears evidence, again, of what we said the other evening when we were here about the number of hours that were spent by representatives of our association with representatives of the Department of Finance in discussing all aspects of this bill. This is an excellent explanation of many of the points that were covered in those hours of negotiations, and we wanted to make it perfectly clear that the representatives of the Department of Finance recognized many criticisms that we made of the original draft and amendments made from time to time. I think the Minister brought out very clearly those that are left are matters of differences of opinion on the importance of certain items where we were not able to arrive at an agreeable solution with the Department of Finance before the bill and the regulations came down.

I read with particular interest the first four pages of the memorandum, and we were very happy to see that the Government fully recognizes the potential impact of this tax on the savings habits of Canadians and on the generation of what you might call fixed interest capital in this country. The industry did submit to the Department of Finance a very complete summary of our estimates of

the effect of these proposals on the generation of that capital. Unfortunately, we did not receive an opportunity of discussing these in depth with the officials involved.

It is evident from these pages that these did make some impact, and I was particularly noticing the sentence at the bottom of page 4, where the Minister said:

I would not deny that the taxes on insurance companies will bear more directly on savings than many other taxes,...

It is obvious the Minister has come to a judgment on his own assessment of the impact, weighing it against the volume of revenue that he is to receive and the principle of equity as between institutions. I can only say that our institution feels that perhaps the effect on the savings habits of Canadians and on the generation of fixed interest capital will be more serious than perhaps even the Minister appreciates.

On page 6 the Minister does start to enumerate those areas where there still remains a difference of opinion with the industry, where he says:

The complaints of the industry on this investment income tax are essentially that the deduction for expenses and the tax credit for the provincial premium tax should be larger and should be related to the kind of business done by the company.

His analysis at the top of page 7 of the difficulties involved is an excellent one. I suggest, however, that in the paragraph at the bottom of the page...

The Chairman: That is, page 7?

Mr. Lemmon: I am referring to page 7, about a quarter of the way from the bottom, where this appears:

Moreover, the figure of 50 per cent of the expenses attributed to the savings element results in a ratio of expenses to investment income that is considerably higher than the expense ratio which the life insurance companies change on deposit administration accounts...

I submit, Mr. Chairman, that this is not really a comparison because the deposit administration accounts are basically investment administration accounts with very little other expense attached to them, whereas for their ordinary policyholders there are selling

expenses and administration expenses of a type that are not applicable to a deposit administration account at all.

Somewhat the same remarks would apply in comparing it with mutual funds and management of funds left with trust companies for investment. I am not in a position to comment on the comparison with banks. These are figures that I have not seen before.

The industry, I think, would agree with the minister's last sentence in that paragraph at the top of page 8:

Over the years it may be possible to get a more accurate determination of what is reasonable.

I would also be prepared to consider later any logical formula that the Life Insurance Association could suggest that produces a more equitable treatment of the differing mix of savings and insurance elements in the business of individual companies.

Our Association will continue to provide officials of the department with additional information in this area. We still think that the split of 50-50 is low, and we would hope that before too long we can demonstrate that with a sufficient degree of force that some alleviation will be granted.

Senator Connolly (Ottawa West): By regulation?

The Chairman: By whatever it takes.

Mr. Lemmon: By either amendment of regulation. I believe that most of that would have to be done in the act. Is not that so, Mr. Brown?

Mr. Brown: I believe so.

Mr. Lemmon: I believe that there would have to be an amendment of the act.

The Chairman: Of course, if you have convinced the minister then there will be no difficulty about getting an amendment.

Mr. Lemmon: So far as the premium tax is concerned, it is the opinion of our industry that it is not on all fours with the expense provision at all. This is not a tax that is levied on any other institution, and it is levied not only on the savings element but on the whole element. It is, in effect, a service sales tax which was originally applied to the life insurance industry in lieu of income tax. Therefore, we submit that when a income tax is, in fact, imposed on the life insurance com-

panies, they should be granted 100 per cent alleviation from the premium tax, and not 50 per cent.

The comparison with general insurance companies is not really valid, in our opinion. They are not taxed in the same way that life insurance companies are. They are taxed on their investment income, and to just pick out this one aspect in order to compare them with general insurance companies, is, in our opinion, not quite valid.

Senator Connolly (Ottawa West): When you talk about premium tax you are talking about a tax that is levied by the provinces?

Mr. Lemmon: This has now been assigned to the provinces. At one time the dominion shared in this tax.

Senator Benidickson: Was it assigned just the other day at the conference?

Mr. Lemmon: No, it was years ago—at least 20 years ago.

Senator Connolly (Ottawa West): What you are looking for is 100 per cent relief from that in the interests of avoiding double taxation.

Mr. Lemmon: That is right. It is a sales tax on service that no other service is asked to bear.

The Chairman: The minister admits it is a sales tax.

Mr. Lemmon: It is a sales tax which no other industry is yet asked to bear. Shall I underline the word "yet"?

The Chairman: Yes, I think you should.

Mr. Lemmon: The Minister is quite right in what he says in the last paragraph on page 8, that the main complaints of the industry relate to the tax on their business income, and particularly to the weight of tax. I think his last sentence on that page, going over to the top of page 9, points out very well the substantial problems involved in our proposals. Perhaps I might read that:

As a result, if the company reduces its policy dividends in an effort to pass the tax on to policyholders, then its taxable income is increased and the overall weight of the taxes on the company is increased.

I think honourable senators are well aware of the way in which life insurance is carried on in this country. The majority of the busi-

ness is carried on by mutual companies. The Minister recognizes the need for surplus in a company and says that any company needs a surplus. This is quite true. Other types of companies have other ways of raising that necessary surplus. They may ask their stockholders for additional capital; they may reduce dividends to the stockholders, which does not increase their tax burden at all. Mutual life insurance companies, and to a very large degree stock life insurance companies, in this country have only one way of raising additional reserves for surplus, and that is withholding dividends from policyholders; in fact, to raise the price of their product, and it is necessary under the formula proposed to cut taxes by approximately \$1.75 to produce an addition to surplus of \$1. I submit that this produces terrific pressure on the managements of life companies, pressing them to live more dangerously than perhaps they should in view of all the hazards that face the industry over the years. This would be particularly true for those companies that are perhaps less competitive and in a less strong position to do it.

The pressure on the managements of those companies to live dangerously, to reduce their tax burden by cutting the price of the product to their consumers, will be very difficult to resist. We think this will have an overall effect of weakening the companies and their ability to fulfill their long term contracts.

The Chairman: If that happens, of course, it would be pointed up right away, I would expect, by the Superintendent of Insurance.

Mr. Lemmon: It would certainly be pointed up by the Superintendent of Insurance. He is here, and he will have to speak for himself. I suggest, however, that it may well have the result of compounding some of the difficulties he might have now, and create some that perhaps he otherwise would not have.

The Chairman: Others that he would not want but may get.

Mr. Lemmon: On page 9, in the last sentence of the third paragraph the Minister says:

I also indicated that in my view the taxes would reduce the annual accumulation of income in general contingency reserves of the life insurance industry. I still believe that these are the most likely effects.

With this I heartily agree. It is our opinion that the impact of this compounding of the

tax on any reduction on dividends will put pressure on managements, which will produce problems.

I think those are the comments I would wish to make, Mr. Chairman. At the bottom of page 10 the minister points out the leeway allowed in the tax law for varying the reserves carried. However, the companies are limited in taking advantage of this by the very wording he used:

...particularly when that is necessary to cover cash surrender values, and therefore do not show the difference in their surplus.

This reduced the ability of the company to take advantage of the leeway that is granted in the act.

The Chairman: Do I follow it? You mean the difference that results between the net level premium basis and the modified basis?

Mr. Lemmon: And the modified basis, that is right.

The Chairman: We are tied in. Does that mean you will not be able to use to any great extent the alternative?

Mr. Lemmon: This will depend and vary from company to company, dependent on the cash value basis?

Senator Benidickson: I am sorry, Mr. Chairman, I was out.

The Chairman: We are dealing with Canadian Life.

Mr. Lemmon: There are other points in the memorandum. I hesitate to point them out, Mr. Chairman. They are not quite accurate. One is at the bottom of page 11:

A third contingency to which the companies referred was that policyholders might surrender their policies and the companies would have to sell securities at a loss to meet these surrender values. Our examination of this did not lead us to feel that it justified what was proposed. The companies build surrender charges into their table of guaranteed surrender values in the case of early surrenders. This gives them a cushion against losses they may incur through the sale of securities to meet the surrender claims.

Mr. Chairman, in the life insurance industry it does not work that way. The surrenders

in the early years do not cause a drain of cash: it is the surrenders in the later years, when there are no surrender charges, that cause the loss of cash.

The Chairman: You cannot surrender something until it builds up.

Mr. Lemmon: And by the time it builds up, the surrender charge has disappeared.

Senator Benidickson: There might be a rebuttal of that. I have made a note of that.

The Chairman: There cannot be any rebuttal on the fact of the cash surrender value.

Senator Benidickson: You will have people here on that—not that I am asking for a rebuttal, I am just saying this.

Mr. Lemmon: On page 12, in the second paragraph, the second last sentence:

However, the bulk of the selling expenses connected with issuing a policy are incurred and will be deducted for tax purposes in the first few years of the policy's life whereas the premium usually remains constant throughout the life of the policy.

The next sentence is the one to which I take some exception:

As a result there is rather more of the premium available in later years to meet other operating expenses.

Unfortunately, mortality risk increases in those later years and uses up a larger and larger proportion of the premium, so in the later years very little is left for expenses.

Senator Benidickson: It is this kind of thing that I wanted to...

The Chairman: It is useful, because it will be put in the memory bank as a lot of facts, so that when any changes are being considered they will not be considered entirely on this memorandum but will be on the corrections to it. It is important to have the corrections.

Senator Benidickson: This comes back to the regulations and the value of this committee for discussion of the regulations.

Mr. Lemmon: I would like to discuss a paragraph on page 13:

I should also like to point out that over the period of ten years from 1957 to 1967 the ratio of surplus to total liabilities on the world business...

I underline the words "world business"...

...of Canadian life insurance companies as reported by the Superintendent of Insurance has risen from 6 per cent to 7.6 per cent. During the year 1967 the ratio of surplus to total liabilities increased from 7.4 per cent to 7.6 per cent.

The companies are becoming increasingly aware of the declining market value of their assets.

The next sentence reads:

My belief, after looking over the results for that year, is that many of the companies could have paid taxes comparable to those proposed in this Bill, they could have maintained their dividend scales at the rates which were in effect, and still they could have added to their surpluses or their contingent reserves an amount equal to about 5 percent of the increase in their total liabilities.

I have not seen those figures or had an opportunity to examine them. I know the figures of my own company in some detail and I wonder if, in examining those figures, the Minister took into account that this is the world business of life insurance companies and not just the Canadian business. In the case of our own company, in the year 1967, if we had deducted from our Canadian earnings for that year the tax that is now proposed, we would have had a very substantial deficit. On the other hand, if it had been deducted from our world earnings we would not have had a deficit. We are required by law in the United States and by the tax law to maintain a surplus in the United States.

I submit that that is not a fair figure to be brought into our ability to pay taxes in Canada. We do also carry on business in the British Isles where the law is not as rigid. We are not required to carry a surplus there but, in fact, do.

I just wonder if these figures have taken into account that many of the large Canadian companies do carry on business outside of Canada and that much of their retained earnings accrues to business outside the area subject to this tax.

The Chairman: If it does not bring that in or reflect that, then it is not a fair statement, because the only tax we are talking about is the tax on Canadian life insurance business income.

Mr. Lemmon: That is right, sir.

The Chairman: Yes.

Mr. Lemmon: On page 14 the question is raised as to the treatment of Canadian common stocks dividends. It was not the submission of our association that there was anything wrong with the basis that was proposed for life insurance companies. We merely pointed out that it was inconsistent. It appears from the last sentence on page 15 that the inconsistency may be removed in another way.

The Chairman: Maybe you will get a vote of thanks for calling their attention to it.

Mr. Lemmon: I think that concludes my remarks, Mr. Chairman. We appreciate very much the opportunity of presenting our views to this forum.

In the early stages of our discussions with the Minister of Finance we were led to believe that the proposals would be introduced in the House of Commons in the form of a White Paper and that ample opportunity would be given to representatives of the association to present their ideas before the proposals actually came down in bill form. Somewhere along the line the Government changed its mind in this matter and brought the proposals down in bill form, which did not give us an opportunity to present our views before the House of Commons or the members thereof. Therefore, we doubly appreciate the opportunity of presenting our views before this body. Thank you very much.

The Chairman: Are there any questions?

Senator Carter: Mr. Lemmon, the impact of this legislation on the companies will, I presume, carry over to the policyholder. Will it affect policyholders who have paid-up policies?

Mr. Lemmon: If they are participating policies and are still receiving dividends on those policies, yes.

Senator Carter: Will it carry over into the new policies of people who have just started to take out policies?

Mr. Lemmon: Yes.

The Chairman: And who receive dividends?

Mr. Lemmon: And it may well affect the premiums on non-par insurance as well. This is an individual company matter.

Senator Benidickson: Senator Carter raised a very interesting question. Your reply was equally interesting. You said participating insurers. I can understand that. It would affect their dividends. But on a contractual basis, where the profits of the company were not distributed, say, on...

Mr. Lemmon: On what we call non-participating contracts? No, they will not be affected.

Senator Benidickson: They have contracts with you for a certain period, and you have made your investments on that basis and you have anticipated your taxes on that basis.

Mr. Lemmon: That is not quite right, but there is a provision in the bill recognizing existing non-participating contracts which will be exempt from the 15 per cent investment tax.

Senator Aseltine: How will this bill affect the premiums of people applying for insurance from now on?

Mr. Lemmon: I am sorry I cannot even answer that for my own company let alone answer it for the industry. This is a matter for the individual members. Each company has to decide the impact of the tax on that particular company and what effect it will have on the premiums and the dividends of each individual company. This is something we do not talk about amongst ourselves.

Senator Benidickson: But we are in an era of fabulous interest rates for your industry. I mean the individual speculator might expect more but your industry has always been conservative because you have a gilt-edged security for long terms at very high rates. A new buyer of insurance could participate in that.

Mr. Lemmon: That is right. This will be taken into account as well.

Senator Isnor: I would like to pursue the question raised by Senator Carter about paid-up policies. There must be hundreds and thousands of paid-up policies, 15 or 20 years' old. You have said that those policies would be affected.

Mr. Lemmon: If they are not receiving dividends on the paid-up policies, those dividends could be affected, but only the dividends.

Senator Isnor: In what way?

Mr. Lemmon: This again I cannot answer. It is a question for the individual company to resolve as to how it will alter its dividend distribution to take this tax into account.

The Chairman: If you assume the dividends continue in the amount at which they are now, that amount would be income in the hands of the particular policyholder.

Mr. Lemmon: Only if he surrendered the contract. If it matures as a death claim, it does not.

The Chairman: I am talking about a limited contract.

Mr. Lemmon: No, it is only affected if it is surrendered.

Senator Benidickson: Could I ask a question to which I do not know the answer? Is there a difference between a mutualized group—and we have had a lot of legislation about mutualized groups and the ordinary insurance company. What would the effect of this legislation be on the policyholders of such a group as compared to, say, an insurance company that was owned by private investors.

Mr. Lemmon: Basically there is no difference on the impact of this tax on a stock life company and an ordinary insurance company.

The Chairman: If there are no other questions of Mr. Lemmon, I understand Mr. MacGregor has something he wishes to say. I might also add that when we finish dealing with these life insurance company matters, we might adjourn until 9.30 tomorrow morning to deal with the other aspects of the bill which will not take long. This will enable Senator Leonard's committee to go to work this evening.

Senator Leonard: Thank you very much, Mr. Chairman. The Finance Committee has a meeting at 8 o'clock this evening.

Senator Connolly (Ottawa West): In addition to this bill, do we have any other bills to consider?

The Chairman: Tomorrow morning we have the two National Housing bills, but they will not take very long.

Senator Benidickson: Mr. Chairman, because of my former association, to which I referred earlier this afternoon, with the Department of Finance, before Mr. MacGregor speaks may I say for the benefit of the record of today's proceedings that Mr.

MacGregor is a gentleman who frequently gives testimony before this committee, in the past usually for the Government. I would like to say that he is highly respected and very much admired by us.

The Chairman: It is all right to say it, but it is quite unnecessary because we all know Mr. MacGregor well.

Senator Benidickson: I wanted the Canadian Life Insurance Association to know that anything he says will be highly regarded.

Senator Connolly (Ottawa West): He had a standing ovation the other night too!

Mr. K. R. MacGregor, Immediate Past President, Canadian Life Insurance Association: Mr. Chairman and honourable senators, I think Mr. Lemmon has adequately commented on most of the points in the Minister's statement. However, if I may be permitted to do so, I should like to add just a word about the need for contingency reserves in a life insurance company and the weight of the tax proposed.

Before so doing, might I simply comment on three statements made by the Minister? First of all, near the bottom of page 12, the last full paragraph, the statement is made:

On the whole, however, we believe that the companies are being permitted to compute their incomes in accordance with rules that are at least as generous as those which apply to their competitors and that any further reserve strength needed by the companies should be provided out of after tax profits.

My first comment on this statement is that I do not think any of our competitors are subjected to what I have referred to previously as a double-barrelled tax formula whereby they pay on one ingredient of their business regardless of their overall operating results.

Secondly, we have not been asking for an appropriation for contingency reserves after tax, but at the assumed policy holder rate of tax of 15 per cent rather than at the full corporate rate of 52 per cent.

Senator Connolly (Ottawa West): That is very important. I do not think that has been brought out as clearly before. Would you say it again, Mr. MacGregor?

Mr. MacGregor: It is simply this, senator, that we have not been asking for an appro-

priation to contingency or general reserves after tax but, rather, at the assumed policyholder rate of tax of 15 per cent and not the full corporate rate of 52 per cent.

The Chairman: That was developed in my questioning of the Minister, and he agreed that because you are permitted to set up contingency reserve pre-tax, it did not mean the amount of it escapes any tax.

Senator Connolly (Ottawa West): Oh, I remember that now.

Mr. MacGregor: The second statement to which I should like to refer is at the bottom of page 13, to which Mr. Lemmon has already alluded:

My belief, after looking over the results for that year, is that many of the companies could have paid taxes comparable to those proposed in this bill, they could have maintained their dividend scales at the rates that were in effect, and still they could have added to their surpluses or their contingent reserves an amount equal to about five per cent of the increase in their total liabilities.

As a general statement I certainly question that. I do not know the companies to which reference is made. It certainly does not apply to my company, which does business entirely in Canada. It could not have added anything to contingency reserves, and its surplus would not have been increased had the present tax formula been in effect.

The third statement to which I should like to refer is on page 17, at the end of the first partial paragraph:

I feel confident that these new tax arrangements will not imperil the safety of the industry.

I believe that these proposed taxes will have a very profound effect upon the industry, and I believe that they will weaken their financial position. I believe that inevitably the imposition of a tax burden of this magnitude in one fell swoop will induce companies not to face up to reality as quickly as they should—in other words, not to cut their policyholders' dividends in one fell swoop—but to try to smooth it as much as they can, and in the process they will inevitably grow thinner. Perhaps the Minister feels that this is desirable. In his Budget Speech, in reference to predicted results, he foresaw a moderate adjustment in dividends and a deduction in

contingency reserves in respect of which, if I remember correctly his own words, he said "is as it should be".

Well, the minister also referred to an honest difference of opinion about the need for contingency reserves. I am afraid nothing that anyone can say will alter my opinion about the need for contingency reserves for the life insurance companies.

The Minister also referred to our request as involving a principle of appropriating moneys to the general or contingency reserves—and I put in quotes there "pre-taxed", although as I mentioned earlier, we have in mind that it would not be pre-taxed, but at a different and lower rate. His comments, I thought, indicated that in many respects—and perhaps most respects—the business of life insurance is not any different from any other business. At least, I got the impression from what he said that it should certainly be taxed in the same way. I would agree to that as far as practicable; as far as our business is similar to others. But, I do think that the life insurance business is different from other businesses. Our guarantees are very long term. Our investments in the main are very long term. They are not comparable to the investments made by banks and trust companies. We are buyers of long-term bonds, and not short-term bonds.

Senator Isnor: That is a matter of policy, is it?

Senator Benidickson: You do that to match your annuity responsibility?

Mr. MacGregor: We do it mainly because our liabilities are all long-term liabilities.

The Chairman: It is part of the fabric of your operation.

Mr. MacGregor: Somehow it seems that since the war, when conditions have been so good, many people do not see any need for contingency reserves at all; investment values have been rising, real estate values have been rising and so on. It was not always this way, and I do not believe it always will be this way.

Senator Connolly (Ottawa West): And that is not only because you are Scottish, is it?

Mr. MacGregor: When one mentions an investment reserve of 1½ per cent against bonds and mortgages, I suggest one ponders for a minute the position of the bond accounts of most Canadian life companies today. In the

letter to the honourable chairman it was said that some portfolios had depreciated perhaps 10 per cent to 15 per cent. I can say that in the case of my own company our bond portfolio at the end of last year had a book value of about \$415 million. Its market value, using November 1, 1968, values, which are prescribed under the act, was \$60 million less than book value; that is 15 per cent. I wish the market today were still as good as it was last November.

Senator Beaubien: It is way down.

Mr. MacGregor: We had, I admit, an excessive market over book value on stock account. I do not know where we are today, frankly. I question whether any Canadian life company today has an excess of market over book value on bond and stock accounts. If there is one, I do not know of it offhand.

Senator Benidickson: That is a very important statement.

Mr. MacGregor: Of course, we may be told, "But these are just currently depreciated values. You are not going to sell the bonds. You do not have to." In answer to that I would say that if a company grows thin and a remedy has to be found, no potential buyer, no other company, will have regard for anything else but current market values. I have gone through that on more than one occasion. What can be done if a company grows thin? In a mutual company you have to find your way out yourselves. You cannot call on shareholders; there are not any. If you cannot nurse it back to health you have to look for a potential re-insurer, some company to take it over. I could quote companies that in a relatively short time after being strong for 50, 75 or 100 years nearly, suddenly grew weak.

There is a bill in Parliament now to transform a mutual fire insurance company, with a long and honourable history, which was a very strong company, into a stock company, because it needs to be taken over, and the stock of the new company will be bought by another existing mutual company. That is simply a means of taking it over. In a stock life company there is no remedy of calling on shareholders if the company grows thin. The capital in a stock life company grows so small relative to the liabilities that you could not possibly call on the stock, and it has not the authorized capital to do it anyway. You have to nurse it back or look for a potential re-insurer. All I can say is that I lived through

the 'thirties, when times were not as they are today, when companies were not subject to these taxes.

Senator Benidickson: Where were you then? In the Government?

Mr. MacGregor: Yes I was. I was in the Department of Insurance, from 1925. It was necessary to nurse several companies and they were not subject to taxes at current levels. Of course, life companies have varying inherent surplus earning capacity. In some companies the rate is quite good, in the larger more mature companies. In the smaller companies, generally speaking, their inherent surplus earning capacity, before dividends, before earning at all, is much smaller.

In those days—of course, the figures are not relevant in today's earnings—in those days, if a company had surplus earnings, invested surplus earnings, before dividends, of the order of 2 per cent of their fund, they got out of the their difficulties in a relatively short period.

Those with a surplus earning capacity of 1 or a $\frac{1}{2}$ per cent had a terrible struggle and they are still small and never got anywhere. Had they been subject to tax of this kind, I believe some of them would not be in business today at all.

I am disappointed, I must say, that the minister and the tax officials cannot see their way clear to provide deduction in the business tax formula for some appropriation to contingency reserves.

I think it would mean a great deal for the future of the industry, particularly having in mind the conditions that are likely to lie ahead. Among those conditions I have in mind, hopefully, a declining interest rate. Surely interest rates cannot continue to rise or even stay where they are at this level indefinitely. As those interest rates come down, our earnings of course will come down and our taxes will go down. But our taxes, I am afraid, will remain a relatively heavier burden, compared with our earnings, they will not come down as fast.

I just see difficulties ahead. I quite appreciate the views of the tax officials about precedents for pre tax contingency reserves.

I do not think our business is the same at all as the manufacturing business to which the minister referred. The moneys we are talking about are essentially policyholders' funds, they are not shareholder's funds, they are policyholders' funds, in the main.

I think it is in the interests of the country, of the economy of the country, to keep our life companies strong. They have been strong, but to take the view that they will remain just as strong and do just as good a job as they did is straining reality. It is a great pity. I have nothing more to say but I would be happy to answer questions.

The Chairman: Thank you very much. Are there any questions?

Senator Phillips (Rigaud): I have one question. Do you not think that, as a result of the new tax rates, that premiums are bound to rise, as part of the cost of doing business?

Mr. MacGregor: The "non-par" (non-participating) business is bound to rise.

Senator Phillips (Rigaud): Incidentally, as a result of the increase in the premiums and the 2 per cent provincial tax that is now paid under the act, there will be no possible credit for the increased 2 per cent on the increased premium.

Senator Leonard: In effect, the participating premiums also go up, because you get less value for the same amount of premium.

Mr. MacGregor: That may be a matter of company policy, Senator Leonard. Some companies have had the same policy over the years—they charge relatively high participating premiums and pay relatively high dividends.

Senator Leonard: But even if the premium remained the same, obviously the taxes could not come out of somewhere.

Mr. MacGregor: The tax burden sooner or later will be borne by the policyholder.

Senator Leonard: Over the same amount of premium.

The Chairman: Mr. MacGregor, with this tax bill in force, how would you justify raising the premiums on participating policies so as to be able to maintain the high level of dividends or to pay higher dividends? All you are doing is inviting more taxes, are you not?

Mr. MacGregor: It is the differential between the premium level and the tax that counts, because the dividend is deductible from the premium. So, taxwise, it does not make any difference, if you have a high premium and a low dividend or a low premium and a relatively high dividend.

The Chairman: If you increase the premium, unless you increase the dividend as well, you may have more money becoming subject to the corporation rate.

Mr. MacGregor: It would depend on the policy of the company.

The Chairman: Thank you very much.

Now, honourable senators, if there is nothing further at this time, the committee adjourns until tomorrow morning at 9.30, at which time it will proceed with the other aspects of the bill.

The committee adjourned.

Ottawa, Wednesday, June 25, 1969

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-191, to amend the Income Tax Act, met this day at 9.30 a.m. to give further consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, we are continuing our hearing on Bill C-191 and what we will look at now are those general amendments to the Income Tax Act. Yesterday we concluded the first part which dealt with taxation of life insurance companies, and there were some 10 or 12 amendments which I referred to and gave some explanation of to the committee. Therefore I thought I might give Mr. Brown an opportunity first to deal with any items he wants to pick out as number 1 or number 2. If he does not wish to do that, then I would suggest dealing with the headings.

Mr. J. R. Brown, Senior Tax Adviser, Department of Finance: I can deal with them in whichever order you wish.

The Chairman: Well, would you take a moment to deal with what might be called the unpaid amounts, whether those amounts are deductible by the person who is supposed to pay them and how the treatment is proposed in this bill as against what is in the act.

Senator Phillips (Rigaud): May we in addition have some attention to the cost of borrowed money.

Mr. Brown: On page 3 of the bill you will find clause 3 which deals with unpaid amounts,

and the changes have to do with unpaid amounts in respect of salaries, wages, bonuses and that sort of thing. We have had in the act for some years a section dealing with the general area of unpaid amounts when the person to whom the amount was owed was not at arm's length with the company or the taxpayer who owed it. This type of provision is necessary in our view because some taxpayers are on an accrued basis, as you know, and can deduct expenses when they record the liability, while other taxpayers are on a cash basis and do not pay taxes until they receive the money, and the possibility of a hiatus did not pass unnoticed. Consequently, we felt we needed something in the act to keep this type of accrual to reasonable limits. There has been one for some time dealing with accrued amounts where the person to whom the liability was owed was not at arm's length with the payer, and in that situation the rule has generally been that if it was not paid for two years after the end of the year in which it was first accrued, then the taxpayers have a choice; they either sign an election in which basically the man to whom the payment is owed says that he will pay tax on it notwithstanding whether he receives it or not, and the other alternative of course is that he does not sign such an election, and here the act is rather rough, because it simply says that we will now reverse that accrual for tax purposes and we will put the amount back into income in the third year. That is the income of the payer, the one who owes the money. It is generally thought that people will sign the election. There came to be rather more widespread use of this hiatus I mentioned earlier with respect to accrued salaries, wages and bonuses than was the case with anything else, and to keep it within reasonable bounds, the decision was to move from two years after the end of the taxation year to one year after the end of the taxation year, so that now if the unpaid amount relates to salaries, wages etc.,—and this is true whether the employee is a shareholder or not—then they have to sign the election at the end of one year. Otherwise these dire consequences follow.

If they do sign at the end of one year, then the employee is saying he will pay tax on the amount of money now rather than when he gets it. In order that this should not be too much of a burden on him, the act imposes the obligation on the employer to withhold tax and send in the money so that the employee will be in the position of saying "yes, I will

sign the election, but you will withhold at source so that it will not cost me any money."

Senator Burchill: Mr. Brown, as the law stands at present, are dividends in the hands of paid-up policyholders taxable?

Mr. Brown: As received?

Senator Burchill: Yes.

Mr. Brown: No.

Senator Burchill: This will not change that?

Mr. Brown: No, this will not affect that.

The Chairman: But there is the provision with regard to any salaries, wages or other remuneration arising from an office or employment, that at the end of this period, if the payment has not been made, it shall be deemed to have been received by the employee?

Mr. Brown: Only if the employee signs the election. If he does not, then it will not.

The Chairman: If he does not sign an election?

Mr. Brown: Then the employer has it reversed.

The Chairman: Then the employer has it reversed, and what he had taken as an expense goes back into income?

Mr. Brown: Yes.

The Chairman: Are there any questions on that?

Senator Phillips (Rigaud) raised the item relating to the cost of borrowed money.

Senator Phillips (Rigaud): Page 44, I think.

The Chairman: That is in clause 24 of the bill, and you will find it starting on page 44.

Mr. Brown: This is a change which I believe I can say, without reservation, works to the advantage of the taxpayer, so it is a pleasure to be able to explain it.

The Chairman: They are getting rarer all the time.

Mr. Brown: Yes, that is why I made my opening remark.

The Chairman: They stand out like a ruby in a crown, do they not?

Mr. Brown: The effect of this is to permit taxpayers, if they choose, to capitalize

interest paid during construction of whatever sort of industrial plant or dam or what-have-you, rather than charging it to expense; and I should repeat that it allows them to at their option.

The effect of that is that it permits them to defer the deduction, if they choose, and some taxpayers will choose to because if they had to charge it to expense as they incur the interest, it would create a tax loss which they would not be able to make use of in the five-year carry-over period.

So, the effect of this section is to permit them during the construction period, if they borrow money, to capitalize interest paid, and as the plant gets into operation, in effect, it allows them to say, "Now we are in commercial production we will switch from capitalizing interest to charging it to expense."

The same is true with borrowed money used to explore or develop in the case of mining companies. It allows them to say, "We have passed this phase during which commercial practice would cause us to capitalize interest, and now we are into production the interest should be charged to operating expense."

The Chairman: There is something in the bill which says you capitalize for tax purposes in the year in which the money is spent.

Mr. Brown: Yes.

The Chairman: And then you can go back and pick up the previous three years.

Mr. Brown: Yes.

The Chairman: So that your capitalization, which will start in the year in which the money was spent, will cover the period of that year and backwards three years.

Mr. Brown: Yes.

The Chairman: In the meantime, to the extent that such companies have to file returns, I suppose, they have to treat this as an expense?

Mr. Brown: Yes. I think they would be showing a tax loss during those years.

The situation that is in mind is that of a company that may arrange a rather large borrowing in advance of the time when it is actually to be expended. They might borrow—and let us take a good figure—say \$10 million, and they might arrange that borrowing because, without that arrangement, they

could not contemplate undertaking a construction contract. The \$10 million, or some part of it, might be put temporarily, let us say, in bank deposits, term deposits, and they would draw it down and use it on construction. So, during that interim period they would file returns, and those returns likely would show losses.

The Chairman: If they draw money down right away and invest it in short-term paper of some kind or another, they have income.

Mr. Brown: Yes.

The Chairman: Then they come to a period three or four years later and spend the money for the purpose for which it was borrowed, and then they capitalize and capitalize the previous three years, and that leaves them with some offsetting income.

Mr. Brown: At that point they are entitled to capitalize less than all of the interest. If I were in their shoes, I would capitalize the amount that left me with a break-even period.

Senator Connolly (Ottawa West): You can assure us, as far as subsection 2 and any relevant sections connected with it are concerned, that none of the incentives for exploration, prospecting and developing which now exist in the Income Tax Act are withdrawn as a result of this?

Mr. Brown: Not as a result of this; in fact, I think they are enhanced.

Senator Connolly (Ottawa West): Oh!

Mr. Brown: In that, as I said earlier, if they had had to charge this interest to expense for tax purposes, even in the very first few days of the company's life, it might be a tax loss they were unable to use within the five-year carry-over period. With regard to a company starting from scratch or from a loss position for tax purposes, if it borrows money to go into exploration, it can now be certain it can hold off the deduction of expense.

Senator Connolly (Ottawa West): It should be helpful?

Mr. Brown: Yes.

Senator Connolly (Ottawa West): The reason I mentioned it is that we had representatives from the oil industry here the other day and this is one of the things they were very interested in. However, you have answered the question.

Senator Phillips (Rigaud): I am not sure whether I am capturing the point. I agree this is very progressive legislation. Why are you confining the right to capitalize in an instance where money is used for construction or exploration; or, why, as a general principle, should it not be allowed under 11 and regulations to all taxpayers, even if the money is to be used for industry or other purposes?

Mr. Brown: It has to do with retaining some bite to the five-year carry-over. I recognize it is debatable whether five years is long enough, but so long as the law provides for that five-year carry-over of losses, there should be some meaning left to that.

In this instance what is being contemplated is a start-up position. I know you are aware, but I should make it clear for the record, that this would also apply to the acquisition of machinery or equipment for installation.

Senator Phillips (Rigaud): Depreciable property?

Mr. Brown: Yes, any depreciable property or exploration and development. Here we have a situation in which the tax losses, the losses for tax purposes, are not really economic losses at all; they are losses by virtue of the statutory rules concerning the deduction of interest and would not be viewed as a loss by men in business. Consequently, it was to relax the rule concerning the five-year loss carry-overs to bring it closer to the business concept. I think most businessmen who borrow for inventory would nevertheless consider in their financial statements they should record it as an expense. I recognize the force to the argument there is a borderline there and it is not all black and white, as the law inevitably makes all borderlines.

Senator Phillips (Rigaud): Now the door has opened, you may have opened it a little farther.

Senator Connolly (Ottawa West): Even if you have to squeeze in sideways.

The Chairman: Even though you get the door ajar, it is just as difficult to move it farther as it is to get it ajar in the first place.

Senator Phillips (Rigaud): Well, you do better according to the way you put your foot in.

The Chairman: It makes you feel better. You can see inside.

Senator Connolly (Ottawa West): Hope springs eternal—

The Chairman: There is another item that may arise out of this, and that is clause 21 dealing with the sale of oil and gas leases. Clause 21 commences on page 39, and it amends section 83A of the act.

Mr. Brown: This provision, senator, as you are aware, works in the opposite direction from the one we have just referred to. To put it shortly, this closes a loophole in our act. Since 1962 the proceeds of the sale of oil leases have been income. At the same time, the cost of oil leases was made a deductible expense.

The proceeds of the sale were brought into income as received—a sensible provision, since that is when the cash would be on hand to pay the taxes but one of the unexpected results, which perhaps we should have foreseen, was that a non-resident who owned oil leases in Canada and sold them for so much down and so much a year had to bring into tax the proceeds that he received in that year in which he made the sale, but subsequently he did not have to bring the cash collections into income because he was not carrying on business in Canada, or was resident in Canada.

A shortcoming in the act may go unnoticed for as long as a week a half, but very rarely does it go unnoticed for much longer than that. So, there were non-residents, both non-resident companies and non-resident individuals—and I think it is open to suspicion that some of the non-resident companies may have been controlled by Canadians—who were in a position where they were selling leases on perfectly normal commercial terms with so much down and so much a year, and the end result was that we were getting tax on very little and the purchaser was deducting very much. It was felt that it was necessary to take steps to offset this.

The technical procedure has two aspects. First, the taxability of the proceeds was put on an accrual basis. It is recognized that that is too rough to be left unameliorated, so at the same time the taxpayer was given the right to a reserve in respect of the profit relating to the unpaid amounts. Now, the advantage is that no reserve is given in the year in which he ceases to carry on business in Canada, so that the effect for a Canadian company selling this type of lease is exactly the same as it was before, but the effect on non-residents is that they will pay tax at the time they cease to carry on business in Canada on this accrued amount.

The Chairman: Otherwise they can set up a reserve equal to the receivable?

Mr. Brown: Yes.

Senator Beaubien: Mr. Brown, how does it work in the United States if a Canadian was working there in that way?

Mr. Brown: Senator, I am really not competent to give an answer to that question. I do not think, generally speaking, that the proceeds of the sale of oil leases go into ordinary income in the United States. I think they are given capital gains treatment, which means half rates to a maximum of twenty-five.

Senator Connolly (Ottawa West): What is the rate in a case like that where a non-resident purchases an oil lease?

The Chairman: It is the corporate rate.

Mr. Brown: Most of these transactions are carried on through corporations, so it becomes the corporate rate. If the transaction was carried out by an individual we would then be talking about the individual rates which would be applied to his Canadian income. If the income were large enough it would go right through the scale to as high as 82.4 per cent. Perhaps that fact, quite apart from any other benefits, explains why any large operation is carried on through corporations.

The Chairman: There is the special mortgage reserve that is dealt with in clause 24 at pages 42 to 44 of the bill. I think that perhaps we should have some comment on that.

Mr. Brown: For some time we have had in the act a provision that mortgage companies can, instead of going through their mortgages and trying to assess those that were doubtful, and to what extent they were doubtful, take an average rate of reserve against all mortgages, and there would be no need for them to justify it to the tax assessor, nor for the tax assessor to be bothered to investigate as to whether it was more or less than was needed to measure the doubtful element in the total mortgage portfolio. Until this budget the maximum amount to which this reserve could go over a period of years was 3 per cent of outstanding mortgages.

On investigation of loss ratios it was decided that this figure of 3 per cent was too generous, and it was decided that the maximum to which it could be brought over the

years should be reduced to one and a half per cent. When I say "over the years" I should mention that in the case of a new company there is a restriction in the act that it can only add to the reserve so much in any one given year. Effectively it amounts to one-half of one per cent of the outstanding mortgages at the end of the year. Previously, it was one-half of one per cent, but eventually they could work up to a maximum of three per cent. It is proposed in this bill that it be one-half of one per cent in any given year working up to a maximum of one and a half per cent.

It is also recognized that some companies will be in a position presently where their reserves are more than one and a half per cent of the outstanding mortgages, so a phase-in provision is included, whereby the excess that they had on hand at the end of 1968 can be worked off over a ten-year period to bring them down to the one and half per cent.

May I say that at the same time the reserves of banks which have been on the same basis were also restricted to one and a half per cent, and the same ten-year procedure is being followed by the banks to bring their reserves to one and a half per cent.

The Chairman: The effect of this is not that the Government loses any tax on either the old rate or the new rate, but because when the mortgage is paid out in full at some stage the reserve as it relates to that becomes unnecessary.

Senator Beaubien: It would go back into income.

Mr. Brown: Ultimately. Taking each mortgage as an individual item, that is perfectly correct, senator. I think though in a growing business, or in any business that is not declining, any reserve of this nature constitutes a virtual permanent postponement.

The Chairman: It would be a continuing reserve and, therefore, it would appear in the deductions every year.

Mr. Brown: That is quite true.

Senator Beaubien: Mr. Brown, if a company had a big loss it could write it off? It does not stop them from writing off any loss?

Mr. Brown: No, the deduction for losses is separate and additional to this reserve, senator.

Senator Phillips (Rigaud): Generally speaking, I do not think you apply that philosophy to taxpayers at large, do you?

Mr. Brown: In respect of receivables, senator?

Senator Phillips (Rigaud): Do you not require the average taxpayer, say a manufacturer dealing on a current basis, to value his accounts receivable at the end of the year rather than allow him a percentage of outstanding debts as a reserve?

Mr. Brown: That is quite right in a commercial concern. If they want the deduction for reserve for doubtful debts they must first convince themselves of the proper amount, and then convince the assessor it is in fact proper.

Senator Phillips (Rigaud): I mention that because in referring to banks, where you are following the one and a half per cent and so on, there should be some indication to the committee in respect of normal manufacturing commercial operations that you do an exact valuation.

Mr. Brown: Yes, we do.

Senator Connolly (Ottawa West): As a matter of interest, when you arrived at the one and a half per cent did you survey a certain number of mortgage companies to see what the situation was?

Mr. Brown: Yes, we did. We found it was a little less than one and a half per cent. We felt that to serve this purpose and to reduce their trouble and to reduce our trouble it had to be generous.

Senator Connolly (Ottawa West): It is not a figure picked out of the air.

The Chairman: There are a few items that have particular significance. I think we might profitably take a moment on the children's allowances, which is clause 5 of the bill.

Mr. Brown: As honourable senators are aware, we have had two levels of deductions for dependent children in our act for some time. At the present the lower amount of \$300 applies to children in respect of whom family allowances could be paid and the higher amount of \$550 in respect of children for whom family allowances could not be paid. Effectively, for 95 to 99 per cent of the children this has meant the same as saying \$300 so long as they are not 16 and \$550 once they turn 16.

However, there have been two groups for which that was not true. I might mention in particular the armed forces who are sent overseas. When they are overseas they do not get family allowances as such. The parents get another set of allowances, which include an amount in respect of family allowance but which is not called family allowance. Therefore, these people were getting the family allowance and the higher exemption. This was brought out in committee reports, and is also mentioned in the Auditor General's Report, and ultimately this is part of what lies behind this change.

Another group was those who are in Canada while their children are not. Here one might mention immigrants or people who send their children abroad to school. With immigrants, often the children were in European countries where there is a family allowance scheme in effect, so again we were faced with the situation where people were getting family allowances, although not necessarily from the Canadian Government, and also the higher allowances. This is what lies behind it.

It is rather interesting to note that the U.K. government spoke to us, because some of the Canadian soldiers in the U.K. were getting these allowances of which I spoke in lieu of family allowance from us, were receiving family allowances from the U.K. government, and they were also getting the higher exemption, so I wonder if we will ever get any of them home!

The Chairman: Maybe this will bring them home.

Mr. Brown: Maybe.

The Chairman: Are there any questions on that?

I would now like to invite comment from you, Mr. Brown, on the philosophy behind the change in the payment dates for corporations.

Mr. Brown: The corporate speed-up.

The Chairman: I would say this is about top speed.

Mr. Brown: I suppose the whimsical comment would be that I do not see how we can go any further.

The Chairman: I think I made that comment.

Mr. Brown: I am not surprised. This will put corporations on a more current basis.

They will begin payment in the first month of their year and will have concluded on the basis of estimates by the end of the year. In most cases, of course, with a growing company there will be a balance to pay, which will be paid three months after the year. It puts them very much on the same footing as individuals who pay monthly as they go along and settle up four months later. In order to avoid unreasonable interest we continue what I might describe as a safe haven, in that a company can pay on the basis of known figures rather than estimated figures. If they do so, no interest can be charged. They are entitled to pay either on the basis of the figures for preceding years that are known or on their estimate of the current year.

The Chairman: Even on their estimate of the current year, for the first two months, I believe, they may pay on an estimated basis without risk.

Mr. Brown: I think what we have done is to say that if you go to the safe haven, the known figures, during the first two months of the year you do not have to use the year just finished, because you might not know the details, you can use the year before. A company with a calendar year end can base their payments in January and February of 1970 on either their actual figures for 1968 which are known or on their estimate of 1970. For the remaining ten months...

Senator Connolly (Ottawa West): Why not 1969?

Mr. Brown: In January, 1970, the companies felt they might not know 1969. If they are using known figures they use 1968 for January and February and 1969 for the rest of the year. If they chose an estimate, they use an estimate throughout the whole of the year. At the end of the time the interest is measured by the lower amount, so they have the safe haven of the known figures or, if the year looks bad, they can take a bit of a risk on interest and pay on the estimate.

The Chairman: With regard to the suggested headings, these would appear to be the major items of general amendment to the Income Tax Act. There are other items, like adding certain medical expense items that are deductible.

Senator Burchill: Have we left the item of payment?

The Chairman: Yes, unless you have some questions.

Senator Burchill: What about the custom in the United States? Do the United States demand payment every month from corporations?

Mr. Brown: They are in the process of changing. I believe they are still on a quarterly basis, and for some considerable time it applied only to the very largest companies. Over a period of years, starting I suppose with the late President Kennedy's tax reform bill, they began to extend it to more and more corporations, until the current suggestion before the house Ways and Means Committee involves bringing all corporations on this basis over the period of the next few years. However, I believe it is still quarterly.

Senator Connolly (Ottawa West): I suppose the general philosophy behind this is that the government gets the benefit of the interest on payments when they are made sooner.

Mr. Brown: I think that is the general philosophy. There is one other point, too, that at the end of the year it is always easier to collect a small amount than a large amount.

Senator Connolly (Ottawa West): That applies both to quarterly and to monthly payments.

Mr. Brown: I do not want to put it too strongly but it is easier to make the smaller payments three times for some people than a large payment at the end of three months. That is not true of large strong companies, but it may well be true of smaller companies where there are lots of ways to spend any given dollar and if it were not sent to the Government in January and February it may not necessarily be in the bank account in March.

The Chairman: There is the other point that the companies, as early as January and February, even if they billed out in those two months, may not have been paid. They may have to do the borrowing to make the payment. I would assume the least that you would do is permit them a deduction for the interest on that borrowed money.

Mr. Brown: I do not think there is a deduction specifically provided, but in the course of things, I believe the interest on normal business loans is always deducted.

Senator Burchill: Mr. Brown, a great many companies are seasonal companies. They do not make any income; they are building up a

production perhaps and make a sale on an average of every three or four months, sometimes less than that. I mean bulk shipments. I am thinking of shipments to the United Kingdom, and particularly in the business I am interested in, the lumber business. We do not have any income at all. The first part of the year—we are actually paying on income we do not have at all.

Mr. Brown: Senator, I quite recognize that problem. Many industries have a sort of cyclical year. The only thing I can say is that companies can choose their year end and some companies happen to choose the year end just before they get all this money in, to use your terms, and in that instance, of course, they have now transformed it from a point where they get a lot of money late in the year until they get it early in the year. We do not ask for any acceleration in payments beyond what is in this bill.

The Chairman: This covers the headings and main topics that are representing amend-

ments. Unless any member of the committee has some particular item he wishes to speak about, I think this would conclude our hearing. We have two other bills to deal with and I think there may be some discussion on the form of our report on Bill C-191. Therefore, I was going to suggest that we defer that phase of it and go ahead with the other two bills and meet afterwards in camera to discuss the report. Is that agreeable?

Senator Croll: Are we not dealing with the bill at all at the moment?

The Chairman: Clause by clause? No, what I am saying is that we are now concluding our examination of the bill and we have heard those who wished to be heard. The decision as to reporting the bill, even without amendment, is a matter that I do not think we can settle at this moment. We should confer later this morning in camera, to do that.

Whereupon the committee proceeded to the next order of business.



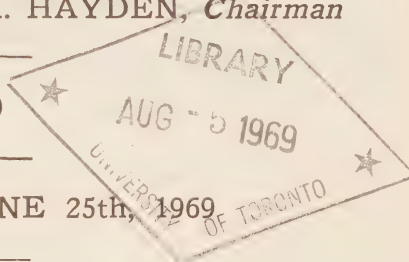
First Session—Twenty-eighth Parliament
1968-69

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE
ON
BANKING, TRADE AND COMMERCE

The Honourable **SALTER A. HAYDEN**, *Chairman*

No. 50

WEDNESDAY, JUNE 25th, 1969



Complete Proceedings on Bills C-192 and C-201,

intituled:

"An Act to amend the National Housing Act, 1954."

WITNESSES:

The Honourable Robert Knight Andras, Minister without portfolio, in charge of housing. H. W. Hignett, President, Central Mortgage and Housing Corporation. Harold Taft, Director, South Central Toronto Businessmen's Association.

REPORTS OF THE COMMITTEE

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Leonard
Aseltine	Desruisseaux	Macnaughton
Beaubien	Gelinas	Molson
Benidickson	Giguère	Phillips (<i>Rigaud</i>)
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Isnor	Welch
Connolly (<i>Ottawa West</i>)	Kinley	White
Cook	Lang	Willis—(30)

Ex officio members: Flynn and Martin
(Quorum 7)

ORDERS OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, June 18th, 1969:

"Pursuant to the Order of the Day, the Honourable Senator Langlois, moved, seconded by the Honourable Senator McDonald, that the Bill C-192, intituled: "An Act to amend the National Housing Act, 1954", be read the second time

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Langlois moved, seconded by the Honourable Senator Smith, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

"Pursuant to the Order of the Day, the Honourable Senator Langlois, moved, seconded by the Honourable Senator Smith, that the Bill C-201, intituled: "An Act to amend the National Housing Act, 1954", be read the second time.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Langlois moved, seconded by the Honourable Senator Smith, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, June 25th, 1969.

(56)

At 10:15 a.m. the Standing Senate Committee on Banking, Trade and Commerce proceeded to the consideration of:

Bills C-192 and C-201, "An Act to amend the National Housing Act, 1954".

Present: The Honourable Senators Hayden (*Chairman*), Aseltine, Beaubien, Burchill, Carter, Connolly (*Ottawa West*), Cook, Croll, Gelinas, Isnor, Kinley, Phillips (*Rigaud*) and Thorvaldson. (13)

Present, but not of the Committee: The Honourable Senator Langlois. (1)

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Resolved:—That 800 copies in English and 300 copies in French of these proceedings be printed.

The following witnesses were heard:

1. The Honourable Robert Knight Andras, Minister without portfolio in charge of housing.
2. H. W. Hignett, President, Central Mortgage and Housing Corporation.
3. Harold Taft, Director, South Central Toronto Businessmen's Association.

Upon motion it was *Resolved* to report the said Bills without amendment.

At 11:00 a.m. the Committee adjourned until later this day.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORTS OF THE COMMITTEE

WEDNESDAY, June 25th, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill C-192, intituled: "An Act to amend the National Housing Act, 1954", has in obedience to the order of reference of June 18th, 1969, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

SALTER A. HAYDEN,
Chairman.

WEDNESDAY, June 25th, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill C-201, intituled: "An Act to amend the National Housing Act, 1954", has in obedience to the order of reference of June 18th, 1969, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

EVIDENCE

Wednesday, June 25, 1969.

The Standing Senate Committee on Banking, Trade and Commerce, to which were referred Bills C-192 and C-201, to amend the National Housing Act, 1954, met this day at 10.15 a.m. to give consideration to the bills.

Senator Salter A. Hayden (*Chairman*) in the Chair.

Upon motion, it was *resolved* that a verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 copies in French be printed.

The Chairman: Honourable senators, we have two bills before us this morning, C-192 and C-201, being amendments to the National Housing Act, 1954. I suggest that we hear whatever the minister has to say in relation to both bills at the one time. Mr. Andras, have you a statement to make at this time?

The Honourable Robert Knight Andras, M.P., Minister Without Portfolio, Minister Responsible for Housing: Yes.

The Chairman: Would you go ahead?

Senator Connolly (*Ottawa West*): I think this is the first time Mr. Andras has appeared before this committee.

The Chairman: Yes, and we welcome you and hope that you will come often.

Hon. Mr. Andras: Which implies survival.

The Chairman: Yes.

Hon. Mr. Andras: Mr. Chairman and honourable senators, it is a great occasion for me to appear before you and I welcome the opportunity most enthusiastically. I heard your chairman suggest that the two bills are not contentious. I think I will then abide by the principle that one might be wise to quit while one is ahead and therefore make my statement relatively brief. I shall not deal at

length on the background against which the new NHA amendments have been developed.

I am very much aware of my studies over the six or seven weeks since I received this assignment, and due to some previous knowledge that you gentlemen had a great deal to do over the years with Canada's National Housing Act and housing policy. In fact, I believe and recognize that you contributed measurably to its evolution. I rather place myself at your disposal this morning to answer any questions you may have in regard to the new recommendations and amplify the policy behind any particular amendment.

I have with me Mr. Jean P. Lupien, Vice President of Central Mortgage and Housing Corporation, supported by Mr. K. D. Tapping, one of the senior administrative officers of the Corporation. Mr. H. W. Hignett, President of CMHC, will be along very shortly. He was delayed slightly.

In addition to being prepared to attempt to answer any questions I shall certainly look forward to benefitting from any observations you may have to put forward which would eventually be applied to future changes in our housing policy and to the act. There is no doubt about it that if the federal Government is to continue to play its full role in our national development, vis a vis housing, then our housing legislation and housing policy must be constantly revalued, reassessed in the light of changing circumstances.

These present changes which you are examining are but a step forward and a major step forward, but only a step forward in a far-reaching plan to create, in our federal act, the means to bring good housing within the reach of every Canadian family and particularly, I think, in terms of federal direct responsibility, in order to bring housing to those who cannot meet open market prices. Although some of the amendments aim to stimulate the climate for higher levels of housing production, generally adding to the total stock, I believe that honourable senators will recognize that many of the changes have

been directly weighted to give new impetus to the distribution of housing to those of the lower income ranges.

The Chairman: What ranges would you say?

Hon. Mr. Andras: In my view the major problem we face is in the range from say \$8,000 down. It varies according to what I would call the distress level in various regions of the country. In some areas, as I think we are all aware, a \$5,000 a year income—and this applies to some of the smaller towns and the more isolated areas—can provide a great deal more than say a \$8,000 income in the heart of Toronto or places like that. So it is a relative matter. There is all the poverty level discussion on this—for it is those with ranges of income at the low end of the income scale who are really caught in the rising costs.

The Chairman: I take it the income is a factor which either triggers or does not trigger action under this legislation.

Hon. Mr. Andras: Under part of it—the areas to which we intend to devote most of our CMHC capital budget—the direct federal investment in housing. Such programs as we have, under 16, 16A, limited dividend, non-profit co-operative housing, are what I would call devoted to the higher end of the low income scale. The public housing projects, for which we provide subsidized rental, is for the low end up to \$6,000 to \$6,500 a year. There are some subtle differentiations there. This is devoted to low income people.

The Chairman: Would that include what they call senior citizens?

Hon. Mr. Andras: Senior citizens, yes.

The Chairman: There are people who, by reason of health or age, or some other conditions, are not able to afford regular rental accommodation. I think there is some development in Toronto where such people, not necessarily senior citizens, can move into these areas at the lower rental, which just could not be obtained anywhere else. I would expect that, since the city would operate this, they would subsidize the rental?

Hon. Mr. Andras: In every case we deal through the provincial housing authorities—the Ontario Housing Corporation is a very active provincial housing corporation or a limited dividend and non-profit or co-opera-

tive housing association, we provide loans at preferred interest rates, allowing amortization over 50 years. This is quite new. Under an amendment to the act we have broadened the sponsorship of this kind of operation to include individuals, corporations, public housing authorities, municipalities, provincial organizations. It is much broader than it used to be.

The Chairman: For instance, when going into New York by train in the early days, one could see quite a slum area. I understand one of the companies, Metropolitan Life, acquired all that area and constructed an ideal type of accommodation there, where the apartments were laid out with ground areas and playgrounds. I would think that is a low income area. It may be that some provision was made by governments or by the city, I do not know, but they are certainly low rental areas.

Hon. Mr. Andras: The net effect is the low rental. In the case of limited dividend non-profit organizations, in return for the preferred interest rate, in return for the extended amortization period, in return for a very high loan to value—which is now 95 per cent by virtue of amendments to the act—we ask that the organization sponsoring this commit itself directly to a rent level that is approximately 20 per cent below the level of rent for comparable accommodation.

Public housing operates under two plans sponsored under the NHA. One is the federal-provincial ownership arrangement, where we as a federal Government provide 75 per cent of the capital cost for construction, and the province supplies 25 per cent of the capital cost; and subsequently, because the rents are geared to income—and I will come back to that in a minute—we share in the operating loss, we subsidize the operating loss in that same ratio 75 to 25. That is one public housing method.

Another public housing plan is the loan and joint subsidization of losses. In the first one we joined with the province in the 75-25 partnership, and the partnership holds the asset until the end of the road.

Senator Connolly (Ottawa West): Do you share maintenance in that same proportion?

Hon. Mr. Andras: In the general context of sharing the operating loss, in that proportion, then, yes, maintenance being one of the contributing factors to the operating loss.

The second plan, which is used a great deal by the Province of Ontario, is a loan to the Ontario Housing Corporation—this would apply to all provinces—90 per cent of the value of the public housing project, and operating losses are shared 50-50 by the provinces and ourselves.

These operating losses occur because of the rent to income scale and as this ranges now the tenant would pay 16 per cent of his income, where income is in the neighbourhood of \$200 a month or \$2,500 a year. Regardless of the accommodation in the housing project, that is what he would pay—16 per cent.

As his income rises up to, say, a level of \$500 a month, he would be paying 25 per cent of his income. It is geared that, if his income goes past that, it becomes uneconomic for him to stay in that housing project, because the cost may rise to 30 per cent.

The principle here is sort of "onward and upward"—to make that accommodation available for other people in the low income brackets, where the first person moved out into the general or free market area.

This is the rent to income scale. This, along with very many other aspects of public housing, has been the subject of considerable concern during past months, due to the "task force," due to the recommendation of social agencies and interested individuals. We are putting it under the microscope now. We will be discussing this with the provinces to establish new criteria to apply to the approval of public housing projects which are sent to us in their final stages.

We wish to develop new guidelines, new criteria, as quickly as possible, to apply as quickly as possible, so we can set a line for ourselves. If this is negotiated with the provinces, it could apply to the provinces and be due to start in 1970.

I would like to be able to see it done more quickly than that, but one faces the problem of how quickly one can introduce a needed change without disruption to the point of affecting the people who need the shelter. One cannot be too dramatic in making a change or in breaking new ground.

Senator Croll: How does the announcement made yesterday by the provincial government of Ontario affect it? You saw it? How does it fit into your plans?

Hon. Mr. Andras: I think it will augment. The Ontario Government is financing by making available a \$50 million fund.

Senator Croll: On a 75 per cent first and 25 per cent second scale.

Hon. Mr. Andras: This is going to attract more money from conventional lenders. Approved lenders operate under the umbrella of NHA insurance. In some cases they are one and the same organization. They will choose one loan to make under the NHA insurance and another loan to make under the conventional form.

We have expanded the amortization period for approved lenders loans to be negotiated under the act. We have increased the loan to value ratio. We have increased the maximum loan from \$18,000 to \$25,000.

In the case of existing housing we were limited, under the act as it was, to a \$10,000 loan and certain other inhibiting conditions were attached. That has been changed to provide for a loan of up to \$18,000 on an existing house, with no requirement that particular improvements be made. Because of the lack of federal insurance, the Government backing on the thing they would be a little more cautious in the loan to value ratio and, generally, it would be around the area of 75 per cent of the amount needed to buy the house.

Now, the announcement yesterday in Ontario will provide an additional 20 per cent of the loan to value to go on top of that as a second mortgage up to a maximum of \$5,000, and that second mortgage will be amortized up to a 35-year period—not a five or 35-year period—to market rates in terms of...

Senator Croll: In interest.

Hon. Mr. Andras: Yes.

Senator Connolly (Ottawa West): Talking about market rates, do you mean for second mortgages?

Hon. Mr. Andras: I should really qualify that. The announcement I saw indicated that it would be at the same rate that CMHC will be making its direct loans under section 40 of the act.

Senator Croll: Am I wrong in assuming that this is a more generous approach than we are making in this act?

Hon. Mr. Andras: No. It is not more generous. We are providing 95 per cent. We will insure 95 per cent of the value on new houses and on existing houses up to \$18,000.

Senator Croll: If it is not more generous, then why are they doing it? If it is available under this act, then why are they doing it?

Hon. Mr. Andras: They are going to attract, senator, loans from an area of conventional lenders which has been operating outside the act. It is an assist to the whole thing and will broaden the flow of mortgage funds into residential housing.

Senator Croll: To that extent, then, it goes further than you go.

The Chairman: No, it enlarges the field.

Senator Croll: That means that you are going further. The purpose of this act is to enlarge the field; it is an opportunity for people to obtain housing.

Hon. Mr. Andras: The effect is correct, but the conventional lenders, who are in many cases the same people who are NHA approved lenders, could choose to make those loans. We provide the facilities and the backing and the guarantee to those same people to do it under NHA insured, loans, but in some cases they have chosen for their own reasons to go by another route. They may get a little more interest on the first mortgage.

Senator Croll: What area of funds is available for direct loans from the federal Government?

Hon. Mr. Andras: Well, section 40 of the act permits CMHC to make direct loans for mortgages.

Senator Croll: How much money is available, approximately?

Hon. Mr. Andras: I will get into that this way: in the past there has been more money available under section 40 for direct loans than we intend to provide as a ratio of the total CMHC capital budget, by my thinking. Our strategy, senator, is simply that we recognize that to provide the housing needs of this country we are going to be very dependent, by necessity—realism dictates that there are many other social priorities than just housing—we are going to be very dependent, by necessity, on the private sector of the market to provide the bulk of the mortgage funds. We have done many things in this act to attract that sector. We have removed inhibitions and the start-stop mortgage funds related to quarterly adjustments of rates. We have provided insurance on five-year mortgages which will attract the short-term

money companies which borrow on a five-year term and which otherwise would be reluctant to commit themselves for 25 years. We have done many things like that.

We are meeting the approved lenders in a few days and I intend to tell them that, since we have made the mortgage yield attractive and competitive, the onus will now be upon them, and we hope they will put more and more money into the mortgage fund. This has to look after the bulk of mortgages for people of the middle income and up, and it puts us in a position to devote more and more of the CMHC capital budget, the direct federal availability of funds, into, as I should like to see, the low income directed programs which, frankly, have been neglected before because we had to bolster the private market before.

Senator Croll: Are you implying public housing?

Hon. Mr. Andras: Public housing, yes, and limited dividend loans and all that sort of thing. Frankly, we reallocated the CMHC capital budget in the light of our examination of the situation and our consultation with those involved, and in the light of new amendments to the act, and we will be devoting over 50 per cent of that capital budget to 16-16A and 35A-35B, which are the limited dividend, non-profit areas of our activity.

This is a considerably greater proportion of CMHC's capital budget than ever before devoted to that area.

The strategy is very dependent upon the approved lenders. Institutional lending is, I would say in the vernacular, "coming to the party".

Senator Connolly (Ottawa West): You mean mortgage companies, trust companies, insurance companies, banks and so on?

Hon. Mr. Andras: Exactly.

Senator Connolly (Ottawa West): Your main dealing, I take it, in these general considerations in not with the individual housebuyer or homeowner but is rather with the developer or contractor who provided many living units, whether they be multi-unit or single unit. You are dealing, I suppose, to a very large extent with the relatively large homebuilders, whether they be of apartments or of private homes.

Hon. Mr. Andras: I assume that is the case and experience. Mr. Hignett might care to elaborate on that.

Senator Connolly (Ottawa West): It seems to me that you are going to have a policy directed in that direction rather than to the individual who goes and hires an architect and gets a contractor and builds his house. You have got to talk to the people who are in the wholesale business.

Hon. Mr. Andras: But that individual can get assistance, advice and guidance, and we welcome that. We hope to promote it to a degree perhaps greater than ever before.

Senator Connolly (Ottawa West): Really?

Hon. Mr. Andras: Yes. We hope to improve the accessibility of our services across the country.

Senator Connolly (Ottawa West): Most people buying houses today don't build their houses themselves. They go to a stock builder. Perhaps Mr. Hignett might say what percentage of loans are made to individuals for individual homes.

Mr. H. W. Hignett, President, Central Mortgage and Housing Corporation: Senator Connolly, in terms of the insured lending program we are merely insuring the loans made by the lending institutions. The situation is as you describe. Activity centres mainly in urban Canada in about 29 cities. They deal mainly with large landlords or people who are building houses for sale, and this is the kind of housing production that takes place in urban Canada. As you say, very few people build their own homes.

In rural Canada, however, the situation is different. There is no organized building industry. The lenders, because of administration costs in rural areas, are not keen to operate there and this is where section 40 is used. It is not used in big cities to any great extent. So, in our section 40 program, a very high proportion of it is used for loans to individuals for home-ownership in small places or in rural places.

Senator Connolly (Ottawa West): When you come to deal with the large operator in one of these 29 cities, do you look at all at the profit that he might make out of the work he does? The profit that he gets out of the units he sells? Is that part of your approach to the thing?

In other words, individual housing is so expensive—and in certain areas seems to be going up all the time—that it makes one wonder whether there is anything like an exorbi-

tant profit being taken from it. Do you ever have to consider that?

Mr. Hignett: We consider this in reverse, Senator Connolly. The market for housing is free in the sense that the builder of houses can sell his products for whatever he considers the market will bear. There is a great difference of efficiency as between building firms; some builders are highly efficient and others are not. Our concern is rather whether he is going to make any profit at all or whether he is going to go bankrupt in the process. If we are satisfied about his financial competence and that he can undertake and complete the performance which he proposes, then we are inclined to go along with him. If we are not so satisfied, we will not. But we do not look into the other aspect of it; there are no controlled sales prices in this country.

Hon. Mr. Andras: There are programs where we check with the limited dividend and non-profit organizations.

Senator Croll: But the limited dividend has been a dead letter on our books for a long time. We have never been able to get much interest in the thing from the time we first put it on. It has been reviewed and brought to life from time to time but then it has always become a dead letter again.

Hon. Mr. Andras: I think there is a surprising amount of activity in this field. I was surprised at the figure for the number of units we have in Canada now on limited dividends—about 40,000; we only have about 40,000 units of public housing as well. We are hopeful to have more because of the new broadened sponsorship and because of the new more favoured loan aspects which some of the amendments to the bill will stir up, plus the fact that we are devoting more money in our capital budget to limited dividends. Perhaps this has now become a misnomer under the act, but before profits were limited to 5 per cent of equity. That is being removed but it will not mean an increase in rents because we are going to control them by a fixed contractual obligation. We believe this will encourage better efficiency in these projects if the fixed rents which I have explained is about 20 per cent below the comparable rents in the community because we believe you can get a better profit through efficiency. If it is less than that, that is unfortunate, but the rent control factor and the physical form of the building and all these things will be supervised before we grant the loan.

Senator Burchill: The Province of New Brunswick made an announcement some time ago concerning various low-rental projects being authorized in certain sections of that province. Are you familiar with the scheme they are talking about?

Hon. Mr. Andras: We are working with the Province of New Brunswick mainly on a 75/25 per cent basis. We have seen programs which are providing a 75/25 per cent capital cost operating loss subsidy sharing between the federal and provincial government. The Maritimes and the Atlantic Provinces generally use that, and at the moment there is an increase in the total whereby we lend 90 per cent of the value to the provincial housing authority and the province puts up 10 per cent, and we share in the operating loss on a 50/50 basis. They are starting to swing into the second program now probably because in the end they will acquire assets.

Senator Burchill: Meanwhile the housing corporation owns the houses?

Hon. Mr. Andras: In New Brunswick the housing corporation in the second plan would own the houses or apartment buildings or row housing, yes.

Senator Burchill: What would be the rental?

Hon. Mr. Andras: It is on a rent to income basis which would be 16 per cent of an income of \$200 a month and would go up to 25 per cent of an income of \$500 a month. Beyond that it becomes burdensome for the tenant to stay in that kind of housing because he is becoming more affluent and he can compete in the open market.

The Chairman: Mr. Harold Taft is here to make a short submission on some aspects of urban renewal. I was wondering if the Minister would care to make a comment on this subject.

Hon. Mr. Andras: Yes, urban renewal was initiated under National Housing five years ago and generally speaking its objective is to identify, plan and finally implement with federal assistance renewal in the blighted sections of communities in Canada. I believe there have been almost 200—some 190-odd plans developed across the country at varying stages since the introduction of that feature. Many plans go through a study stage and then they go through a scheme preparation stage and eventually enter what is called an

implementation stage. At that stage it comes to us and the federal government at the final implementation stage provides an outright grant for approved plans of 50 per cent of the cost of acquiring and clearing the land area for the renewal action. The other 50 per cent is shared in most cases by the province and the community itself, and the ratio of that share varies from province to province. In addition we provide a loan to the municipality for their share of the cost of that endeavour. Up to $\frac{2}{3}$ of the cost of it is recovered over a period of time. The amendment to the act which is before you now recognizes another feature which has been brought to our attention as a possible weakness in this approach, that is that our program seemed to be geared too much to the acquisition and clearing of land and demolition of buildings rather than rehabilitation, so the amendment widens the authority of the federal government to provide for the acquisition and clearing of land and the acquisition and rehabilitation of buildings where they are identified as being salvageable, and of course the 50 per cent grant of monetary fiscal injection applies to that additional authority as well.

The Chairman: Perhaps Mr. Taft who has a very short memorandum might like to speak now while the Minister is still here to hear it. Then if the Minister wishes to comment, he will be in a position to do so.

Mr. Harold Taft, Director, South Central Toronto Business Mens Association: Mr. Chairman, this memorandum is a brief on urban renewal to the Standing Senate Committee on Banking, Trade and Commerce. The following are recommendations for implementation in an urban renewal area.

The policy of acquiring properties which are not needed until some future date, and leaving them vacant to deteriorate, should not be permitted. Often, people are deprived of much needed housing, which is very scarce in Montreal, Toronto and Vancouver, and are forced to vacate their homes with nowhere else to go.

The freeze imposed on big, expensive, urban renewal projects should be maintained, and the money instead should be invested in homes for lower-income families. This would include houses owned by people too poor to fix them. In such cases a cash grant could be given to the owner to repair his house. In the case of a landlord, he could, in exchange for

a grant, be allowed to repair his house to minimum building standards, and at the same time he would agree to a fixed rental for some prescribed period.

In the past, there has been too much wholesale destruction of property, and the cost of acquiring this valuable property for demolition is too high.

Finally, it destroys the roots of the community and it does not solve the housing problem.

When the expropriating authority acquires property which can be rehabilitated, it should be repaired to minimum building standards. If the property is beyond repair, it should be demolished and the property rebuilt in the same character as the community.

The owner who fixes up his house at his own expense, to comply with minimum building standards, should be permitted to retain ownership of his house, and it should not be expropriated.

Expropriation for parking in an urban renewal area, where sufficient commercial parking nearby is already available, should be completely banned. Often it is an excuse to expropriate land which may not be needed for eight to ten years from the time of expropriation. As a brief aside, I have evidence of this occurrence in my possession at this time, should any of you gentlemen wish a briefing. High borrowing costs are being paid for the money lent to pay for the acquisition of the above surplus land.

This concludes my brief summation to you distinguished gentlemen. I want to thank you for your making my presence here possible to make my few brief remarks. I thank you.

The Chairman: Thank you, Mr. Taft.

Mr. Minister, have you any comments?

Hon. Mr. Andras: Yes, Mr. Chairman. In general terms, I find myself with a considerable degree of sympathy for the points raised by Mr. Taft in his brief. The rehabilitation grant aspect which he has suggested is a matter that we are looking at for future.

I think Mr. Taft and honourable senators would realize that we are in this area of divided jurisdictions and the implications of such a grant have to be very carefully viewed. I do not think there is much doubt about it that they would require the introduc-

tion and exercise of municipal standards and municipal inspections, and it will be the subject of consultation in the next few months with the provinces, to get the feel of their attitude towards this sort of thing. But, in general, in terms of rehabilitation, I am very conscious of the validity of the suggestions, and we will be exploring these, to view all the implications of it and to see what may be done in the future. I cannot commit myself at this time, but I am simply saying I recognize the problem.

In terms of the so-called freeze on urban renewal projects, there are 12 projects before me now at the federal level which are at the stage where implementation would begin to proceed if they are approved, and they range right across the country and vary in type. Some are commercial, with a heavy content of commercial rehabilitation, others have housing content, and each one is different.

Time simply has not yet permitted me to bear down on this. I want to develop a rationale and to be sure there is a viable objective in view, rather than just be program oriented on this. I have made commitments to give answers which may or may not be favourable in every case. And this is not a threat; it is simply a frank statement that I do not yet know, but with regard to these 12 projects I hope to by July 15.

I am aware that indecision and delay also have their price and that the confusion that results as a consequence of not knowing is something that has to be recognized as well.

Behind that, again, there are some 140-odd urban renewal plans in the various stages—the study stage, the scheme preparation stage—which will be moving up into final application for approval of implementation. We have to address ourselves to this matter with great intensity, and will do so as soon as possible.

Mr. Taft, I realize the concern. There are many more concerns—the social implications of the dispersal of kin groups. I had a delegation before me the other day of the Chinese community of Canada, and the day before that from the Kensington Market area in Toronto, and we have to do a sober analysis of this whole project approach and develop a rationale for it. If that sounds indecisive, I must accept that criticism.

Standing Senate Committee

The Chairman: The report crystalizes certain factors, it is now a matter of record, and I know it will be considered by your office.

Hon. Mr. Andras: Very much so.

The Chairman: If there are no other questions, are you ready to authorize reporting

the two bills without amendment?

Hon. Senators: Agreed.

The Chairman: We will adjourn until 12 noon, at which time we will meet to consider our report on Bill C-191.

The committee adjourned.



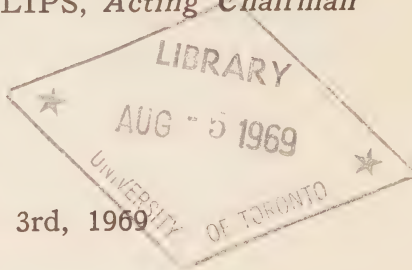
First Session—Twenty-eighth Parliament
1968-69

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE
ON
BANKING, TRADE AND COMMERCE

The Honourable LAZARUS PHILLIPS, *Acting Chairman*

No. 51

THURSDAY, JULY 3rd, 1969



Complete Proceedings on Bill C-202,
intituled:

“An Act to provide for the development of productive employment opportunities in regions of Canada determined to require special measures to facilitate economic expansion and social adjustment”.

WITNESS:

Department of Regional Economic Expansion: W. J. Lavigne,
Assistant Deputy Minister (Incentives).

REPORT OF THE COMMITTEE

THE STANDING SENATE COMMITTEE ON
BANKING, TRADE AND COMMERCE

The Honourable Salter A. Hayden, *Chairman*

The Honourable Senators:

Aird	Croll	Leonard
Aseltine	Desruisseaux	Macnaughton
Beaubien	Gélinas	Molson
Benidickson	Giguère	Phillips (<i>Rigaud</i>)
Blois	Haig	Savoie
Burchill	Hayden	Thorvaldson
Carter	Hollett	Walker
Choquette	Isnor	Welch
Connolly (<i>Ottawa West</i>)	Kinley	White
Cook	Lang	Willis—(30)

Ex officio members: Flynn and Martin

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, July 3rd, 1969:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Robichaud, P.C., seconded by the Honourable Senator Prowse, for the second reading of the Bill C-202, intituled: "An Act to provide incentives for the development of productive employment opportunities in regions of Canada determined to require special measures to facilitate economic expansion and social adjustment".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Robichaud, P.C., moved, seconded by the Honourable Senator Prowse, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

THURSDAY, July 3rd, 1969.

(57)

Pursuant to adjournment and notice the Standing Senate Committee on Banking, Trade and Commerce met at 3.20 p.m.

Present: The Honourable Senators Benidickson, Blois, Carter, Connolly (Ottawa West), Flynn, Martin, Phillips (Rigaud), Thorvaldson and Willis.
—(9)

In the absence of the Chairman, and upon motion, the Honourable Senator Phillips (Rigaud) was elected *Acting Chairman*.

In attendance: E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The Committee proceeded to the consideration of:

Bill C-202, "Regional Development Incentives Act".

The following witness was heard:

Department of Regional Economic Expansion:

W. J. Lavigne, Assistant Deputy Minister (Incentives).

Upon motion it was *Resolved* to report the said Bill without amendment.

At 4.20 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Frank A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

THURSDAY, July 3rd, 1969.

The Standing Senate Committee on Banking, Trade and Commerce to which was referred the Bill C-202, intituled: "An Act to provide incentives for the development of productive employment opportunities in regions of Canada determined to require special measures to facilitate economic expansion and social adjustment", has in obedience to the order of reference of July 3rd, 1969, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

LAZARUS PHILLIPS,
Acting Chairman.

THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE EVIDENCE

Ottawa, Thursday, July 3, 1969.

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-202, to provide incentives for the development of productive employment opportunities in regions of Canada determined to require special measures to facilitate economic expansion and social adjustment, met this day at 3.45 p.m. to give consideration to the bill.

Senator Lazarus Phillips (*Acting Chairman*) in the Chair.

Upon motion, it was *resolved* that a verbatim report be made of the proceedings and to recommend that 800 copies in English and 300 in French be printed.

The Acting Chairman: Honourable senators, the bill before us is Bill C-202 and we have with us as a witness today Mr. W. J. Lavigne, Assistant Deputy Minister (Incentives). He was previously Commissioner of the Area Development Agency.

As a result of the debate that was held in the Senate there will obviously be some questions that will be directed to our witness by way of further explanation of the bill, but I think with your approval we might follow the general procedure heretofore of asking Mr. Lavigne to give us a general bird's eye view of the bill itself, and its basic intent, and so forth.

Mr. Lavigne, you have the floor.

Mr. W. J. Lavigne (*Assistant Deputy Minister (Incentives), Department of Regional Economic Expansion*): Thank you, Mr. Chairman. Members of the committee will recall that this is an outgrowth of the program that was given birth in 1963 when the Government introduced a program to attract industry to areas where there was an exceptionally high degree of unemployment. They were offering to industry, located in these areas, a three-year tax holiday and accelerated capital cost allowances. This was followed in 1965 by the Area Development Incentives Act when

the Government changed the program from an income tax holiday to a cash grant program, whereby companies located in designated areas across the country were given cash grants according to a formula. If the companies met the few conditions set down in the act or if a company established new facilities in a designated area in which 95 per cent of the machinery equipment was going to be new, they obtained the grant according to the formula stipulated in the act. Since it was a statutory grant there was no discretionary authority at all if the rent was paid, regardless of whether or not the industry really needed the grant.

An example of this is the pulp and paper industry which is based on forestry resources. If a company decided to go ahead with the pulp and paper mill, and invariably if this was in a designated area, the Government was obliged to pay then the maximum grant of \$5 million.

The minister introducing this bill has indicated that these are windfalls, and that there is no need to pay resource-based industries because they cannot normally be moved economically. They are companies that take advantage of the resources available. There is not much that one can do to have them move these facilities from one area to another. The committee members will appreciate that this whole program is based on attracting manufacturing and processing industries which are considered to be footloose and which can be attracted into areas of the country where resource-based industries cannot be attracted from one place to another. They are necessarily based on where the resources are located. For this reason, an attempt is made here not only to attract those industries which are desirable, but on the other hand to save money by not having to pay windfalls to industries that would have to be established where they are anyway. Consequently, this is the reason for more discretion in the proposed bill than was available to the

minister under the Area Development Incentives Act.

In the matter of designating areas, at the outset in 1963...

The Acting Chairman: Before you come to that, would you mind a slight interruption? Could you not have a situation where you would have natural resources in a particular area which for some reason or another are not developed? Would not that call for encouragement to industry and to the area for the development of those natural resources?

Mr. Lavigne: This might occur, Mr. Chairman. It is anticipated that the minister should be able to take advantage of such a situation and under the Organization Act he has the authority to draw the plan with the province to encourage such a development.

The Chairman: I am sorry I interrupted you on that point.

Senator Thorvaldson: I do not wish to interrupt, but it occurred to me that the Area Development Incentives Act is not repealed, is it? It is going to remain?

Mr. Lavigne: It runs out on March 31, 1971. Provisions are made in this bill for applications to be received by the minister until the end of this year for benefits under the Area Development Incentives Act. Where a company would apply for benefits under that act and might decide that it would be more advantageous to obtain benefits under the present bill, then, until the end of the year, they would have that choice. But the terminal date of the act is March 31, 1971, which means that commercial companies must come into production at that time.

Senator Benidickson: Mr. Lavigne will be well aware that under the old legislation he heard from many of us in northwestern Ontario complaining that the regulations were frustrating, in that one of the criteria seemed to be unemployment. We may not have had unemployment. We exported our young people, we lost them to the places where there was employment. Briefly, does this bill make it easier for the minister to recognize a situation such as we have in northwestern Ontario where our population is going down? We sent our young people away, although we did not fare too badly on some of the bare bones of statistics that you previously held very important.

Mr. Lavigne: Yes, sir. At the moment there is a committee of officials consulting with the

provinces. The consultations are almost completed.

I started out to say that in 1963 the designation was done by choosing those areas with experience of high degrees of unemployment during the summer months. In 1965 the criteria was changed to take into account not only above the national average unemployment figures but also the low non-farm family income and the distribution of income.

For the purposes of this bill it is proposed that not only these factors be taken into account but also the matter of no-growth and out-migration.

Senator Benidickson: That is our big problem—no growth.

Mr. Lavigne: In consultation with the provinces it is hoped to deal with those areas where unemployment has to be taken into account as well as the out-migration and the fact that there is no growth.

Senator Benidickson: Thank you.

Mr. Lavigne: I have given an overall view of the two main points, the criteria. I might go into the matter of mechanics of grants for a moment. Under the Area Development Incentives Act the Government was paying a grant according to a formula. As I said, the first step was 33½ per cent of the capital cost of the new facility, on the first quarter of a million dollars invested. Then 25 per cent of the amount invested, between \$250,000 and \$1 million. And finally, 25 per cent of the balance of the money invested by the company in the new facility, up to a maximum grant of \$5 million.

In the bill before the committee it is proposed that there be a two-step grant paid to companies willing to establish in areas that will be chosen, the first step being a grant of 20 per cent of capital cost and, where need is proven by the company, and it is also evident to the minister or to the department that the need of the region is such, that a supplementary grant or grants be paid. Provision is then made to add another 5 per cent to the capital cost, plus \$5,000 per job.

Senator Connolly (Ottawa West): What do you mean by \$5,000 per job?

Mr. Lavigne: That means jobs created in the operation or in the facility. It means that if 40 jobs were created in the new facility, there would be \$200,000 in grant money allocated, in addition to 25 per cent of the

investment in capital assets. The maximum grant allowable in the bill is \$6 million for the basic grant of 20 per cent. Under the Area Development Incentives Act it had been \$5 million. The maximum for the secondary grant is 5 per cent or \$5,000 per job, or \$12 million or \$25,000 per job, or half of the capital cost in the operation, whichever is the least amount. This is a one-shot grant which is based on the least amount of \$25,000 per job, \$12 million or half the capital used in the operation.

Senator Connolly (Ottawa West): When you get your facilities established in a certain area and they are working and there is need for newer facilities or different facilities in that same area or in other areas, would you have to come back to Parliament to replenish the fund?

Mr. Lavigne: This will be a matter budgeting each year for anticipated expenditures and it will be done through the Appropriation Acts.

Senator Connolly (Ottawa West): In other words, the amounts you mentioned are not provided for in the bill. The bill simply provides the machinery. In other words it is enabling legislation to get the money through the Appropriation Act?

Mr. Lavigne: That is right.

The Acting Chairman: With respect to the contribution to capital cost, will the beneficiary be entitled to depreciation in respect to the contributions to the cost of the capital asset?

Mr. Lavigne: Not under the proposed bill, but under the Area Development Incentives Act, the entrepreneur could obtain accelerated capital cost allowance, not only on the investment he made, but on the grant. However, under the proposed bill he can only get it on the investment he makes.

The Acting Chairman: That is important.

Mr. Lavigne: Normally this is an expensed item by the company and is consequently not taxable under the Income Tax Act, but that goes for any equipment that is used that is expense rather than capital.

The Acting Chairman: When a contribution is made to the beneficiary company based upon the number of jobs created, is that amount regarded as a contribution to surplus of the company or will it be deemed to be part of

the wage or salary expenditure of the company?

Mr. Lavigne: It will not be taxable, sir. I think that is the point you have in mind. It will be a grant that is not taxable. The formula is simply based on the quantum.

Senator Connolly (Ottawa West): It is a method used in measuring additional capital assistance.

The Acting Chairman: It is a contribution to the surplus of the company.

Senator Blois: I have a question to ask, and perhaps I should ask it now. I was not too clear from what the witness said earlier about something to the effect that companies that are well established or have financial resources would not get this grant. Did I understand you to say that?

Mr. Lavigne: I do not recall saying that, but I did say that the amount of grant would be calculated according to the need of the company in establishing in a designated area as well as on the need of the area for further industrialization to provide jobs for the unemployed.

Senator Blois: I have in mind a company that is quite well to do financially. Now, it might go into a new product that it is not making now, and the question in my mind is would it be able to get capital to buy the new machinery. It does not need it financially, but I suppose on the other hand it would be unfair to give it to somebody else. Now if this company makes let us say an additional 20 or 25 jobs, would it be entitled to the job money as well?

Mr. Lavigne: I will have to answer that by saying that it might be because provision is made in the bill not only to encourage the establishment of new facilities but also to encourage the expansion and modernization of existing facilities and this secondary grant I mentioned, 5 per cent of the capital cost as well as \$5,000 per job is available not only for new facilities but also for the expansion of existing facilities in new production lines.

Senator Blois: In other words, in this firm I am speaking of, if there are 22 new employees they will get the \$100,000?

Mr. Lavigne: They may. This would depend on the importance of its expansion to the region and also on the need of the company for this assistance.

Senator Blois: How can I answer this firm that has asked me about it, because I am not clear from what you tell me?

Mr. Lavigne: They could well qualify for assistance under this program; they have to make a case.

Senator Blois: This company does not need the money, but they will make extra jobs.

Mr. Lavigne: They have to convince the minister this is beneficial to the region and they need the assistance to go ahead with this expansion.

Senator Blois: It will be beneficial to the community, but the firm does not need the money. This point was not made very clear in the bill, and it does not seem quite right.

Mr. Lavigne: Under the Area Development Incentives Act the minister's hands were tied. He necessarily had to make a grant according to a statutory formula, whether the company needed it or not. Under this act it is proposed that there will not be any windfalls, and if a company does not need the assistance available under it...

Senator Blois: But supposing there is another firm within 40 miles and they need assistance, they would get job assistance plus another \$100,000. It seems to me very unfair legislation, just because one firm has been very careful and has built up a strong reserve of capital, they cannot get it, and yet another firm, which started later on but has not been under good direction, they could get it and all this money. It seems to me to be an unfair situation.

Mr. Lavigne: I think we have to agree that such a program is discriminatory in all aspects. It is discriminatory in the sense that you designate one side of the street, but you do not designate the other side; consequently, some people get it and others do not. It is discriminatory in that certain companies can qualify for assistance and others cannot. I think this is an advantage of such legislation, that if you are going to do something for an area which needs assistance, you have to discriminate somewhere, and this is what is happening.

Senator Connolly (Ottawa West): Following what Senator Blois has said, it seems to me that you are putting a premium on improvidence.

Mr. Lavigne: If I did not make myself clear on this point, I should like to have the opportunity to do so.

Under the Area Development Incentives Act I am pleased to report that there was not one industry that went bankrupt or that we lost sight of, simply because there were safeguards such as the matter of equity. Always we looked to sufficient equity being put into the business by the shareholders. Under this program it is proposed that we look at equity as well, and if the shareholders are not willing to put their own money into it, I do not think they should expect the Government to do so. If they are willing to, they must be quite confident they can make a success of it.

The Acting Chairman: I think we should look at section 3 of the act, where we get the hard core of the intent. What we are looking at in this bill is the development of a distressed area rather than incentives to the applicant. In other words, you can have a successful company that can make an application, and it would be entitled to support under the terms of this bill, not because that particular applicant needs it or does not need it, but the test is whether that particular applicant will do something to the area which will be designated, which will have an area of not less than 5,000 square miles. So, the theory under section 3 is not to deal with the status of the applicant but, rather, with the consequences resulting from the incentives that will be given to the applicant in providing employment for a particular area. So, there is nothing discriminatory when you look at it from that angle, because the successful company to which you refer, senator, could still go into that distressed area and make an application, as can any other company. The fact that the successful company makes an application as against a new company does not put it in a discriminatory position. Indeed, that company puts itself in a better position because it is in a better position to supply part of the capital.

Senator Thorvaldson: Mr. Chairman, in respect of clause 3 I should like to ask what is the theory behind the proposal that such an area must not be less than 5,000 square miles. That is a very large area.

Mr. Lavigne: One of the criticisms of the designations of areas under the two previous programs was that we had a patchwork effect. If the small Canada Manpower centre areas were designated all across the country they

would cause a patchwork effect. If an area did not measure up to the statistics then it was not designated, while its next door neighbour was designated. The minister here wants to be able to designate regions rather than areas, because it is recognized that certain regions—as one of the senators pointed out with respect to northwest Ontario—suffer from a certain amount of emigration.

Senator Thorvaldson: They suffer from a lack of growth.

Mr. Lavigne: Yes. If these areas were designated according to the Canada Manpower centres then we might end up with a patchwork. Some areas would be designated while others would not. Under this legislation the whole of northwestern Ontario would be designated, because the bill calls for an area of 5,000 square miles. This simply means that the area might be 50 miles by 100 miles; it does not necessarily have to be square, but in total it would be an area of 5,000 square miles and it would represent a region rather than a small area. A larger area or a larger region is being taken into account rather than small areas.

Senator Thorvaldson: Yes, thank you. I do not disapprove of there being an area of that size.

Senator Connolly (Ottawa West): When you are considering the making of grants do you take into account the technology behind an industry? In other words, are you going to establish a wind and water industry when you can establish an industry that will be run by electronic means, and which will have a smaller labour force, but which will be much more efficient and have better domestic and foreign markets? I take it that these factors are all part of your criteria?

Mr. Lavigne: That is right, sir. We would be very concerned with whether the industry exports not only out of the country but out of the region in which it is going to locate. We will be very concerned about the linkages it might create with other industries. We will look at what other industries might be attracted to establish close to it. We will also be very concerned with the technology, as you put it, of the industry, because it has been shown in other countries that industries with a high degree of technology have a tendency not only to bring about the development of other industry but to contribute to a great deal of social adjustment. It tends to improve

the calibre of expertise locally through demanding better skills of the people.

Senator Connolly (Ottawa West): We have told that, for example, specifically about Port Hawkesbury, where a large refinery is to be established, but there are to be ancillary industries which will flow from the establishment of the refinery and the products made there, which will perhaps alleviate unemployment not only right at the Strait but on the whole island of Cape Breton, and perhaps some of the mainland as well. These things seem to me to be very important. If those are the criteria you are looking at, this commends itself very strongly. This is what we should do in a distressed area, raise the level of the skills and the standard of living.

Senator Thorvaldson: What is the essential difference between this bill and the Area Development Incentives Act which was passed in 1963? We have operated under that act, and I have knowledge of some industries that have certainly raised the whole calibre of communities. That act has operated very well to my personal knowledge. What is the essential difference between this bill and that act?

Mr. Lavigne: I think the essential difference is that under the Area Development Incentives Act, which obtained very good results in many areas of the country, the Government, if you will, paid grants according to a formula regardless of need, regardless of the location. I am thinking now of one community that might have been better prepared for industrial development than another, thinking in terms of growth centres. Because there was a formula, the Government paid the money regardless of need for the region or for the industry.

Under this proposed bill the minister would have discretionary authority not to pay money where it was not required, not to pay windfalls to industry which will do something anyway, but on the other hand to increase the assistance that might be given in other cases where the industry would be very good for the area in that it will create employment of the right type, and being the type of industry it is may attract other satellite industries. More discretion is proposed in this bill than was available to the minister under the Area Development Incentives Act, under which he was working to a formula so that if a company met a few conditions set down it got the whole package of goodies, so to speak, and

that was all there was to it, so there were some windfalls.

Senator Thorvaldson: What do you mean by "windfalls"? Do you mean companies did not need any assistance?

Mr. Lavigne: That is right, sir.

Senator Thorvaldson: Nevertheless, those companies would not have developed a certain industry in an area without the assistance of that act. Is that not correct?

Mr. Lavigne: Not only because the company may not have needed it, but they would have gone ahead anyway and done what they were going to do. Just pulling an example out of the air, one might think of a company setting up a grist mill in an area, not because there is not a grist mill but because there is a market for the feed, so they set up the grist mill. Under the Area Development Incentives Act they had to be paid a grant, although really they knew it would be profitable, that it would work out, and they would have established it anyway because the market was there. Under this bill, after the application has been looked at and the market and the need of the company examined, the minister may decide there is no point in giving the company any assistance because they are going to do it anyway.

Senator Connolly (Ottawa West): This is where Senator Blois' question arises, does it not, because the company he referred to is the one that has the capital? I suppose if the fellow had the capital and was ready to go ahead and make the development and did it, then the other people might very well, on a shared market, be denied the opportunities available under this legislation.

Mr. Lavigne: Under the proposed bill it would be a matter of examining each case on its own merits, looking not only to the need of the company, but also to the need of the region and making sure that development does take place where it is required.

Senator Connolly (Ottawa West): Perhaps I should not ask you this. If it is not a proper question, Mr. Chairman, we will rule it out. Under the old act were there any industries established that should not have been established, and as a result of this did you have any failures?

Mr. Lavigne: As I indicated, sir, we have not any record of a company that has fallen by the wayside under the Area Development

Incentives Act. I would not say that some type of industry was not overdeveloped as a result of the incentive. I think an example of that is the pulp and paper industry. The pulp and paper mills were put under the Area Development Incentives Act. I suppose in some cases several of them would have gone ahead anyway. Here again, if they met the conditions set down by the legislation they were eligible for a grant according to a formula, and therefore they were paid.

Senator Gouin: I would not want the witness to think that I am opposed to this bill; I am in favour of it.

The Acting Chairman: I was about to develop, if I could, a further amplification of the point that seemed to be bothering you and all of us and what was the large amount given in respect of the jobs created. I should like to draw the attention of honourable senators to section 15 of the act which deals with the regulations. Under subsection (b) there is really some protection, because it was provided that the Governor in Council may make regulations. (b) is as follows:

prescribing, for any designated region or for any class of manufacturing or processing operation, an amount less than the maximum amount of a development incentive provided for by this Act, which lesser amount shall, in relation to that region or any manufacturing or processing operation of that class, be deemed to be the maximum amount provided for by this Act;

You really have a situation where through regulations you can get contracts for the maximum amount. That, I think, covers the first reaction that some of us have had of the amount per head as being very large. There is provision that the minister can grant so much per head of jobs created. I have two questions under that heading: first, do the jobs include ordinary executive and salary jobs, otherwise known as white collar payments; second, will there be any provision for the permanency of such jobs? In other words, could we have employees there for two or three months and off they go and this bonus is given to the applicant?

Mr. Lavigne: It is expected that all permanent employees or on-site employees or employees dependent on facility will be taken into account for the job bonus. This does not include people who may be related to sales

and live on the other coast. It has to do with the people who actually live in the area.

The method of calculating the amount of job bonus a company should obtain, will be based on the man years of employment for the two years following commercial production. In other words, we will be looking at the records and determining the number of man years work, less any work stoppages due to statutory holidays, strikes, and so on over the two-year period, and establishing the job bonus that this company should obtain.

Senator Thorvaldson: I would like to ask Mr. Lavigne whether, under the Area Development Act there is a similar provision as is contained in clause 3, with reference to consultation with the provinces.

Mr. Lavigne: No, sir. According to section 2 of the Department of Industry Act the Minister has been given authority to designate areas where there was a need for the development of productive employment. That act has been superseded by the Organization Act, C-173 which gave the Minister authority to designate special regions for assistance, and now under this proposed bill the Minister will have authority in consultation with the provinces to designate areas where productive employment and special measures are required to facilitate economic expansion and social adjustment.

Senator Thorvaldson: Would you care to comment on what is meant by the words "after consultation with the governments of the provinces"?

Mr. Lavigne: In order to determine what regions require special measures, as I have indicated, account is going to be taken not only of unemployment and non-farm family income and distribution of income. We are at the moment consulting with the provinces and getting their views on their programs for development and economic expansion, and the areas that they think require special measures of assistance. It is hoped that by using an element such as the criteria I have described along with consultation with the provinces that we might be able better to identify the areas that really require assistance rather than to depend solely on cold statistics that come out of a machine.

Acting Chairman: Any other questions?

Senator Flynn: In clause 15 you say "The Governor in Council may make regulations" and then we have (a), (b), (c) and so

on. Now I would like the witness to comment on the very wide powers given to the Governor in Council under this clause to include or exclude many operations, and I would say many assets for the purpose of determining the subvention.

Mr. Lavigne: Actually sir what is intended is that the regulations like the Act be broadened, although it will be pretty hard to broaden the class of assets that would be taken into account over what was allowed in the Area Development Incentives Act. We allowed all the machinery and equipment on a site needed to operate the facility and this took into account not only the production machinery but also office equipment, and if a cafeteria was required in the plant to feed the employees, the equipment in the cafeteria was also taken into account. It is proposed in the regulations, according to this act, not to narrow the list but, if possible, to broaden it.

We will be taking into account, for instance, in the assets to be considered for grant purposes, on-site vehicles required for transporting materials. There is even a provision to allow 20 per cent above the normal investment in the facility for such things as access roads and services such as water and sewers, or storage sites, power stations—anything that is required to make the operation of the facility possible. So, it is a matter not of restricting but, rather, of broadening those assets which will be taken into account.

Senator Thorvaldson: I would like just a quick answer to this. Are the funds provided under this act a charge on the revenue or on the capital account?

Mr. Lavigne: They are obtained through the Appropriation Act.

Senator Thorvaldson: Are they contained in the Estimates?

Mr. Lavigne: Yes.

Senator Thorvaldson: Or are they capital?

Mr. Lavigne: They are contained in the Estimates.

Senator Connolly (Ottawa West): They would be an item in your departmental estimates?

Mr. Lavigne: Yes, under the Appropriations Act.

Senator Connolly (Ottawa West): I think we are interested more in the philosophy of this

act than in the actual operation, because that has to be worked out. It is obviously an enabling act and it is obviously one that is going to require some careful attention, certainly in the first stages. There are many parts of this country which are underdeveloped and where there is great poverty. I take it some of these areas are ones where this act really cannot bring the kind of development that could be brought in other areas which would qualify—is that so?

Mr. Lavigne: That is true, sir.

Senator Connolly (Ottawa West): In other words, you are going to have enough to do dealing with areas where there is promise, rather than trying to rescue all those areas which are practically hopeless—is that so?

Mr. Lavigne: I think it is fair to say that we will be giving a deal of attention to areas with potential growth centres, if you want to call them that, where there is some industrial

potential and where it is possible not only to attract industry and to expand existing industry, but to attract satellite industry which will be built on to the initial industry to be established there.

The Acting Chairman: Are there any other questions?

Senator Connolly (Ottawa West): I move that we report the bill.

The Acting Chairman: It is moved that the bill be reported without amendment. Is that agreed, honourable senators?

Hon. Senators: Agreed.

The Acting Chairman: Thank you very much, honourable senators. Thank you, Mr. Lavigne.

Mr. Lavigne: Thank you, sir.

The committee adjourned.

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